

Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

*As promulgated by the Board of Commissioners of the Idaho State Bar
and adopted by Order of the Supreme Court of the State of Idaho.*

SECTION I Jurisdiction and Effective Date

RULE 101. Jurisdiction. Pursuant to the authority granted in Section 3-408, *Idaho Code*, and subject to approval of the Idaho Supreme Court, the Board of Commissioners of the Idaho State Bar hereby promulgates the following requirements, qualifications and procedures for admission to the practice of law in the State of Idaho and maintenance of membership in the Idaho State Bar.

RULE 102. Effective Date. Subsequent to November 1, 1986, the effective date of these Rules, (and as subsequently amended) all admissions to the practice of law in Idaho and maintenance of membership in the Idaho State Bar shall be in accordance with the procedures set forth in these Rules.

SECTION II Admissions

RULE 200. Definitions. As used in the Rules relative to admissions, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) **Approved Law School.** An "approved law school" is one which is fully approved by the American Bar Association pursuant to Standards and Rules of Procedure for Approval of Law School adopted as of August, 1972, and such amendments, changes or revisions thereto as are specifically approved and adopted by order of the Supreme Court of the State of Idaho.
- *(b) **Attorney Applicant.** "Attorney applicant" means any person who, at the time of filing his or her application to take the bar examination in this state, has been admitted to practice before the highest court of another state or of any jurisdiction where the Common Law of England constitutes the basis of jurisprudence.
*(Section (b) amended 3-1-88)
- (c) **Bar Counsel.** "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.
- (d) **Board or Board of Commissioners.** "Board" or "Board of Commissioners" means the duly elected governing body of the Idaho State Bar.
- (e) **Committee or Committee on Character and Fitness.** "Committee" or "Committee on Character and Fitness" means the individuals, acting as a group, who have been appointed by the Board of Commissioners to act upon questions of character and fitness in relation to applicants seeking admission to the practice of law in the State of Idaho.
- (f) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- (g) **Director or Executive Director.** "Director" or "Executive Director" means the chief administrative office of the Idaho State Bar.
- (h) **Foreign Applicant.** "Foreign Applicant" means an applicant who is a citizen of another country admitted to the United States as a permanent resident and who meets all the qualifications for admission to practice law as established by these Rules.
- (i) **Petitioner.** "Petitioner" means an applicant who has been denied permission to take the bar examination or been denied admission to the practice of law on the grounds of failure to pass the bar

examination, character and fitness, or other grounds relative to his or her fitness to practice law in this state.

- (j) **Practice of Law.** "Practice of Law" means active practice of law after admission to the Bar in this or another jurisdiction as a:
 - (1) Partner or associate of a private or public law firm;
 - (2) Legal officer of a corporation or other business organization;
 - (3) Government employee whose duties are primarily providing legal advice to the governmental agency by which he or she is employed or representing such governmental agency before the courts;
 - (4) Legal officer in the Armed Services;
 - (5) Judge, lawyer magistrate, administrative judge or referee, or law clerk to a judge or a court of general or appellate jurisdiction of any state or federal court in the United States; or
 - (6) Full-time teacher in a law school approved by the Section on Legal Education and Admission to the Bar or the American Bar Association.
- (k) **Principal Occupation.** "Principal Occupation" means engaging in the practice of law as the primary source of the lawyer's livelihood.
- *(l) **Reciprocal Applicant.** "Reciprocal Applicant" means a lawyer from a state with whom Idaho has a reciprocal admission agreement, as provided in Rule 204A.
*(Section (l) added 4-10-01 – Effective 10-1-01)
- (m) **Rules or These Rules.** "Rules" or "These Rules" means Rules 200 through 221 of the Rules relating to Admissions.
- (n) **State.** "State" means the State of Idaho.
- (o) **Student Applicant.** "Student Applicant" means any individual, other than an attorney applicant as defined in Rule 200(b), making application to take the bar examination and for admission to the practice of law in the State of Idaho.
- (p) **Transcript.** "Transcript" means a duly authenticated copy of credits showing the completion of educational qualifications for admission to the practice of law in the State of Idaho.

***RULE 200A. Essential Eligibility Requirements for the Practice of Law**

In addition to the successful completion of a degree from a law school accredited by the American Bar Association, the successful completion of the bar examination, and not having otherwise been disqualified under Rule 208, the Applicant must demonstrate the essential eligibility requirements for the practice of law, including the following:

- (a) The cognitive capacity to learn, ability to reason, to analyze and recall complex factual information and to integrate that information with complex legal theories;
- (b) The ability to communicate effectively with clients, attorneys, courts, and others with a high degree of organization and clarity;
- (c) The ability to exercise good professional judgment, both ethically and competently, in conducting one's professional business and financial dealings;
- (d) The ability to avoid illegal, dishonest, fraudulent or deceitful conduct in one's professional relationships and with respect to one's legal obligations;
- (e) The ability to avoid acts which exhibit disregard for the health, safety and welfare of others;
- (f) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal and to conduct oneself professionally and in a manner that engenders respect for the law and the profession;
- (g) The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts and others; and
- (h) The ability to effectively respond and to comply with deadlines and time constraints.

**(Rule 200A added 6-10-98 - Effective 7-1-98)*

RULE 201. Student Applicants

*(a) **Qualifications.** A student applicant for admission to the practice of law in this state must show to the satisfaction of the Board of Commissioners that he or she:

- (1) is at least the age of majority;
- (2) is a person of good moral character; and
- (3) is, or prior to the taking of the examination, will have received a juris doctorate or bachelor of laws degree, or an equivalent basic law degree from an approved law school as defined in Rule 200(a).

(A) **Proof of Compliance.** The Filing of a law school transcript as defined in Rule 200(o) in the Office of the Executive Director of the Idaho State Bar shall be considered proof of compliance with this Rule.

*(4) has, prior to taking the Idaho bar examination or within the next two Multistate Professional Responsibility Examination administrations after successfully completing the bar examination, taken the MPRE and received a minimum scaled score of 85 or such other minimum as the Board may from time to time set.

**(Section (4) amended 8-30-94 effective 9-1-94)*

(5) has competency and learning in the law by taking and successfully completing a bar examination as provided in Rule 210.

**(Section (a) amended 3-1-88 and 3-15-90)*

***RULE 202. Application for Admission by Student Applicants**

(a) **Form and Content of Application.** A student applicant shall file an application for examination and admission to the practice of law on a form prescribed by the Board, which shall include an authorization and release to enable the Board to obtain information concerning such applicant. The applicant must give a full and direct response to the requirements of the application

form in the manner and time prescribed by these Rules and the application form. If a student applicant seeks reasonable accommodation in testing on account of a disability, the student applicant shall file a request on forms prescribed by the Board. A request for reasonable testing accommodation must be filed with and in the same time frame allowed for the application for examination and admission to the practice of law.

*(1) **Time for Filing Application.** All completed applications for permission to take the bar examination and for admission to the practice of law in this state shall be received by the Executive Director no later than March 1 for the July examination and October 1 for the February examination.

(A) **Late Filing of Application.** When an application for permission to take the Bar Examination or a request for reasonable testing accommodation is filed subsequent to the filing deadline provided in Rule 202(a)(1), the Board may act, but shall not be required to act, upon such application in time to permit the applicant to take the approaching examination. Under no circumstances will an application or a request for reasonable testing accommodation, except a request under Rule 208A(d), be accepted if received later than May 1 for the July examination and December 1 for the February examination.

**(Section (a)(1) amended 9-19-96 and 8-12-03)*

(2) **Fees.** No application for examination and admission shall be accepted by the Executive Director unless such application is accompanied by the full amount of examination and investigation fees required by these Rules.

*(A) **Examination Fee.** Every student applicant, at the time of filing his or her application, shall pay to the Idaho State Bar an examination fee of five hundred dollars (\$500.00).

**(Section (A) amended 1/6/97, 1/30/98, and 3-31-00 – effective 2/1/01)*

(B) **Additional Investigation Fees.** In the event the Board determines that an investigation of any student applicant, beyond the usual investigation, provided for in Rule 206, is required, the Board may require the payment of an additional investigation fee, including, but not limited to, the cost of any record or document required by the Board in the conduct of an investigation or inquiry concerning the applicant. The Board shall not proceed with further investigation and the applicant may not sit for an examination until the additional investigation fee is paid and the investigation of his or her character and fitness is completed.

(i) **Notice.** The Board, upon determining that an additional investigation fee will be required, shall notify the applicant of such requirement. The notice required by this subsection shall be in writing and served upon the applicant personally, or by certified mail, return receipt requested, at the applicant's last known address.

*(C) **Additional Administrative Fees.** From time-to-time the Board may determine that it is appropriate to offer test-taking options to applicants, e.g., the use of personal computers. If the Board further determines that individual examinees should be required to bear the additional cost of choosing such options, it may establish an appropriate fee for such options. Nothing in this subsection shall be construed to require applicants to bear the cost of reasonable accommodation, as further provided in these rules.

**(Section(a)(2)(C) added 11-3-99 – Effective 1-1-00)*

*(D) **Late Filing Fees.** If an application for permission to take the Bar Examination or a request for reasonable

testing accommodation is received subsequent to the filing deadline provided in Rule 202(a)(1) and the Board determines to act upon such late application, the applicant shall pay an additional fee of fifty dollars (\$50.00).

**(Section (a)(2)(D) amended 9-19-96)*

(E) **Refunds.** No refund, in whole or in part, shall be made of an examination fee, investigation fee, or late filing fee.

(i) In the event an additional investigation fee is required to complete an investigation of the applicant's character and fitness, the portion of the additional investigation fee which is not used for the investigation shall be refunded to the applicant whose character and fitness is under investigation.

(3) **Penalty for Failure to Disclose Information.** No one shall be licensed to practice law in this State who fails to disclose fully to the Board:

(A) the facts relating to any disciplinary proceeding or charges as to his or her professional conduct, whether relating to a letter of grievance or formal charges; whether the same have been terminated or not, in this or any other state, or any federal court or other jurisdiction; and whether required to do so or not by the Board; or

(B) all facts relating to any civil or criminal proceedings in which the applicant is a party, whether such proceedings have terminated or not, in this or any other state, or any federal court or other jurisdiction; and whether requested to do so or not by the Board.

(C) all facts relating to any illness or disability, including substance abuse and mental health, which affect the applicant's fitness to practice law.

(4) **Complete Application.** The complete application for permission to take the bar examination and for admission to the practice of law must be received no later than 30 days prior to administration of the next scheduled examination for which application is made. Each applicant must ensure that all information, including current address and telephone numbers at which he or she may be contacted, is provided to the Executive Director in a timely manner.

(A) **Penalty for Failure to Complete Application.** No applicant whose application is incomplete as provided in Subsection (4) above shall be allowed to take the next scheduled examination and shall be required to obtain a deferment as provided in Rule 212.

(5) **Release of Confidential Information.** By making application for admission to the practice of law in this state, an applicant waives his or her right to confidentiality of medical/psychological communications, records, evaluations and any other pertinent medical/psychological information touching on the applicant's fitness to practice law as determined by the Board.

(A) **Refusal to Give Written Release.** A Refusal by an applicant to furnish a written release for such medical/psychological information or his or her objection to disclosure of such information to the Board shall be grounds for dismissal of the application.

(B) **Validity.** All forms of Authorization and Release executed by an applicant shall terminate:

(i) upon admission to the Bar;

(ii) upon receipt of notice of withdrawal of the application; or

(iii) upon receipt of notice of termination of the application. An application is not terminated until any appeal or right to appeal is terminated.

**(Rule 202 amended 3-15-91 and 11-3-99 – Effective 1-1-00)*

RULE 203. Attorney Applicants

***(a) Qualifications.** Except as provided in Rule 204A, an attorney applicant, in order to be permitted to take the bar examination, must show to the satisfaction of the Board of Commissioners that he or she:

(1) is at least the age of majority;

(2) is a person of good moral character;

***(3)** has received a juris doctorate or bachelor of laws degree, or an equivalent basic law degree from an approved law school as defined in Rule 200(a).

(A) **Proof of Compliance.** The filing of a law school transcript as defined in Rule 200(O) in the Office of the Executive Director of the Idaho State Bar shall be considered proof of compliance with this Rule.

**(Section (3) amended 3/17/03)*

***(4)** has, prior to taking the Idaho bar examination or within the next two Multistate Professional Responsibility Examination administrations after successfully completing the bar examination, taken the MPRE and received a minimum scaled score of 85 or such other minimum as the Board may from time to time set.

**(Section (4) amended 8-31-94 effective 9-1-94)*

(5) has been admitted to the active practice of law as provided in Rule 200(j); and

(A) **Proof of Admission.** The filing of duly authenticated certificates from the highest courts of each of the states in which he or she has been admitted at any time showing the fact of admission, the date thereof and that he or she is still in good standing therein shall be considered proof of compliance with this Rule.

(6) has been actively engaged in the practice of law as provided in Rules 200(b) and 200(j).

(7) has competency and learning in the law by taking and successfully completing a bar examination as provided by Rule 210.

**(Section (a) amended 3-15-90 and 4-10-01 – Effective 10-1-01)*

***RULE 204. Application for Admission by Attorney Applicants**

(a) **Form and Content of Application.** An attorney applicant shall file an application for examination and admission to the practice of law on a form prescribed by the Board, which shall include an authorization and release to enable the Board to obtain information concerning such applicant. The applicant must give a full and direct response to the requirements of the application form in the manner and time prescribed by these Rules and the application form. If an attorney applicant seeks reasonable accommodation in testing on account of a disability, the attorney applicant shall file a request on forms prescribed by the Board. A request for reasonable testing accommodation shall be filed with and in the same time frame allowed for the application for examination and admission to the practice of law.

***(1) Time for Filing Application.** All completed applications for permission to take the examination for admission to the practice of law in this state shall be received by the Executive Director no later than March 1 for the July examination and October 1 for the February examination.

(A) **Late Filing of Application.** When an application for permission to take the Bar Examination or a request for reasonable testing accommodation is received subsequent to the filing deadline provided in Rule 204(a)(1), the Board may act, but shall not be required to act, upon such application in time to permit the applicant to take the approaching examination. Under no circumstances will an application or a request for reasonable testing accommodation, except a request

under Rule 208A(d), be accepted if received later than May 1 for the July examination and December 1 for the February examination.

**(Section (a)(1) amended 8-31-94 effective 9-1-94, 9-19-96 and 8-12-03)*

- (2) **Fees.** No application for examination and admission shall be accepted by the Executive Director unless such application is accompanied by the full amount of examination and investigation fees required by these Rules.

**(A) Examination Fee.* Every attorney applicant, at the time of filing his or her application shall pay to the Idaho State Bar an examination fee of six hundred ninety dollars (\$690.00).

**(Section (A) amended 1/6/97 and 3-31-00 – effective 2/1/01)*

- (B) **Additional Investigation Fees.** In the event the Board determines that an investigation of an attorney applicant, beyond the usual investigation, provided for in Rule 206, is required, the Board may require the payment of an additional investigation fee, including but not limited to, the cost of any record or document required by the Board in the conduct of an investigation or inquiry concerning the applicant. The Board shall not proceed with further investigation and the applicant may not sit for an examination until the additional investigation fee is paid and the investigation of his or her character and fitness is completed.

- (i) **Notice.** The Board, upon determining that an additional investigation fee will be required, shall notify the applicant of such requirement. The notice required by this subsection shall be in writing and served upon applicant personally or by certified mail, return receipt, at his or her last known address.

**(C) Additional Administrative Fees.* From time-to-time the Board may determine that it is appropriate to offer test-taking options to applicants, e.g., the use of personal computers. If the Board further determines that individual examinees should be required to bear the additional cost of choosing such options, it may establish an appropriate fee for such options. Nothing in this subsection shall be construed to require applicants to bear the cost of reasonable accommodation, as further provided in these rules.

**(Section (a)(2)(C) added 11-3-99 – Effective 1-1-00)*

**(D) Late Filing Fees.* If an application for permission to take the Bar Examination is received subsequent to the filing deadline provided in Rule 204(a)(1) and the Board determines to act upon such late application, the applicant shall pay an additional fee of one hundred dollars.

**(Section (a)(2)(D) amended 9-19-96)*

- (E) **Refunds.** No refund, in whole or in part, shall be made of an examination fee, investigation fee, or late filing fee.

- (i) In the event an additional investigation fee is required to complete the investigation of an applicant's character and fitness, any unused portion of the additional investigation fee shall be refunded to the applicant at such time as a final determination concerning his or her application is made.

- (3) **Penalty for Failure to Disclose Information.** No one shall be licensed to practice law in this state who fails to disclose fully to the Board:

- (A) The facts relating to any disciplinary proceeding or charges as to his or her professional conduct, whether

relating to a letter of grievance or formal charges; whether the same have been terminated or not, in this or any other state, or any federal court or other jurisdiction; and whether requested to do so or not by the Board; or

- (B) All facts relating to any civil or criminal proceedings in which the applicant is a party, whether such proceedings have terminated or not, in this or any other state, or any federal court or other jurisdiction; and whether requested to do so or not by the Board.

- (C) All facts relating to any illness or disability, including substance abuse and mental health, which affects the applicant's fitness to practice law.

- (4) **Complete Application.** The complete application for permission to take the bar examination and for admission to the practice of law must be received not later than thirty (30) days prior to administration of the next scheduled examination for which application is made. Each applicant must ensure that all information, including current address and telephone numbers at which he or she may be contacted, is provided to the Executive Director in a timely manner.

- (A) **Penalty for Failure to Complete.** No applicant whose application is incomplete as provided in Subsection (4) of this Rule shall be allowed to take the next scheduled examination and shall be required to obtain a deferment as provided in Rule 212.

- (5) **Release of Confidential Information.** By making application for admission to the practice of law in this state, an applicant waives his or her right to confidentiality of medical/psychological communications, records, evaluations and any other pertinent medical/psychological information touching on the applicant's fitness to practice law as determined by the Board.

- (A) **Refusal to Give Written Release.** A refusal by an applicant to furnish a written release for such medical/psychological information or his or her objection to disclosure of such information to the Board shall be grounds for dismissal of the application.

- (B) **Validity.** All forms of Authorization and Release executed by an applicant shall terminate:

- (i) upon admission to the Bar;
- (ii) upon receipt of notice of withdrawal of the application; or
- (iii) upon receipt of notice of termination of the application. An application is not terminated until any appeal or right to appeal is terminated.

**(Rule 204 amended 3-15-91 and 11-3-99 – Effective 1-1-00)*

***RULE 204A. Reciprocal Applicants**

**(a) Qualifications.* A reciprocal applicant, in order to be admitted to practice without taking the bar examination, must show to the satisfaction of the Board of Commissioners that he or she:

- (1) Has passed a written examination, been admitted to practice and is currently actively licensed as an attorney by the highest court in any state, United States territory or District of Columbia that grants admission without bar examination under provisions substantially similar to this rule to attorneys licensed in Idaho on the basis of practice in Idaho;
- (2) has actively, substantially, and continuously practiced law as defined in Rule 200(j) as his or her principal occupation for no less than three of the last five years immediately preceding his or her application for admission, in Idaho or another jurisdiction that grants admission without bar examination under provisions substantially similar to this rule to attorneys licensed in Idaho on the basis of practice in Idaho;

- (3) possesses the good moral character and fitness required of all other applicants for admission to practice law in Idaho;
- (4) has received a juris doctorate or bachelor of laws degree, or an equivalent basic law degree from an approved law school as defined in Rule 200(a); and
- (5) has paid such application fees and costs as may be established under these rules.

**(Section (a) amended 8-12-03, 12-16-03 and 6-5-06 – Effective 10-1-06)*

**(b) An attorney licensed as house counsel under Idaho Bar Commission Rule 220 must satisfy the qualifications in Rule 204A(a), except that time spent practicing in Idaho as his or her principal occupation while licensed as house counsel under IBCR 220 shall qualify under this Rule's requirement to demonstrate active, substantial and continuous practice of law.*

**(Section (b) added 8-12-03 and amended 6-5-06 – Effective 10-1-06)*

(c) **Form and Content of Application. A reciprocal applicant shall file an application for admission to the practice of law on a form prescribed by the Board, which shall include an authorization and release to enable the Board to obtain information concerning such applicant. The applicant must give a full and direct response to the requirements of the application form in the manner and time prescribed by these Rules and the application form.*

- (1) **Time for Filing Application.** A reciprocal application may be filed at any time.
- (2) **Fees.** No reciprocal application shall be accepted by the Executive Director unless such application is accompanied by the full amount of fees required by these Rules.

(A) **Fee.** Every reciprocal applicant, at the time of filing his or her application, shall pay to the Idaho State Bar a fee of eight hundred dollars (\$800.00).

(B) **Additional Investigation Fees.** In the event the Board determines that an investigation of a reciprocal applicant, beyond the usual investigation provided for in Rule 206, is required, the Board may require the payment of an additional investigation fee, including but not limited to, the cost of any record or document required by the Board in the conduct of an investigation or inquiry concerning the applicant. The Board shall not proceed with further investigation until the additional investigation fee is paid and the investigation of his or her character and fitness is completed.

(i) **Notice.** The Board, upon determining that an additional investigation fee will be required, shall notify the applicant of such requirement. The notice required by this subsection shall be in writing and served upon applicant personally or by certified mail, return receipt, at his or her last known address.

(C) **Refunds.** No refund, in whole or in part, shall be made of a reciprocal application fee or additional investigation fee.

(i) In the event an additional investigation fee is required to complete the investigation of an applicant's character and fitness, any unused portion of the additional investigation fee shall be refunded to the applicant at such time as a final determination concerning his or her application is made.

(3) **Penalty for Failure to Disclose Information.** No one shall be licensed to practice law in this state who fails to disclose fully to the Board:

(A) The facts relating to any disciplinary proceeding or charges as to his or her professional conduct, whether relating to a letter of grievance or formal charges; whether the same have been terminated or not, in this or any other state, or any federal court or other

jurisdiction; and whether requested to do so or not by the Board; or

(B) All facts relating to any civil or criminal proceedings in which the applicant is a party, whether such proceedings have terminated or not, in this or any other state, or any federal court or other jurisdiction; and whether requested to do so or not by the Board.

(C) All facts relating to any illness or disability, including substance abuse and mental health, which affects the applicant's fitness to practice law.

(4) **Release of Confidential Information.** By making application for admission to the practice of law in this state, an applicant waives his or her right to confidentiality of medical/psychological communications, records, evaluations and any other pertinent medical/psychological information touching on the applicant's fitness to practice law as determined by the Board.

(A) **Refusal to Give Written Release.** A refusal by an applicant to furnish a written release for such medical/psychological information or his or her objection to disclosure of such information to the Board shall be grounds for dismissal of the application.

(B) **Validity.** All forms of Authorization and Release executed by an applicant shall terminate:

- (i) upon admission to the Bar;
- (ii) upon receipt of notice of withdrawal of the application; or
- (iii) upon receipt of notice of termination of the application. An application is not terminated until any appeal or right to appeal is terminated.

**(Section (c) amended 6-5-06 – Effective 10-1-06)*

(d) **Time and Manner for Admission. Following successful completion of the reciprocal admission process set forth above the Clerk of the Supreme Court shall give written notice to the applicant requiring him or her to appear in person before the Court or the Clerk within six (6) months from the date of mailing of such notice to take the oath of admission provided in Rule 214. If the applicant does not appear or present himself or herself for admission within the six (6)-month period provided by this Rule, he or she shall not be admitted unless he or she shows to the satisfaction of the Court that at all times since issuance of the certificate of eligibility for admission he or she has been, and still is, a person of good moral character.*

**(Section (d) added 12-5-02)*

(e) **Continuing Legal Education. All applicants admitted to practice law pursuant to this rule shall complete and certify no later than six months following the applicant's admission to practice law under this rule that he or she has attended at least fifteen hours of continuing legal education on Idaho practice, procedure and ethics requirements, in courses administered by and/or approved by the Idaho State Bar. All applicants admitted to practice under this rule shall complete the Idaho practice and procedure and ethics sections of the Practical Skills Seminar approved for that purpose by the Idaho State Bar. Credits for self-study programs applicable to the mandatory continuing legal education requirements under this rule shall be limited to one half of the 15 hours required.*

**(Section (e) amended 8-12-03, 12-16-03, 3-17-05, 9-15-05 – Effective 10-1-05)*

**(Rule 204A added 4-10-01 – Effective 10-1-01; Sections (d)-(f) renumbered 12-5-02, Sections (c)-(f) renumbered 8-12-03, Sections (e)-(g) renumbered 9-17-04, Sections (c)-(g) renumbered 6-5-06 – Effective 10-1-06)*

RULE 205. Foreign Applicants. A foreign applicant as defined in Rule 200(H) may apply for permission to take the bar examination and for admission on the same terms and conditions as

(a) a student applicant as provided in Rule 201 and 202; or

*(b) an attorney applicant as provided in Rule 203 and 204, whichever is applicable.

*(Section (b) amended 3-1-88)

***RULE 205A. Foreign Legal Consultants.** A person who is licensed to practice law in a foreign jurisdiction as an attorney or counselor at law or the equivalent thereof, and who complies with the provisions of this Rule for licensing Foreign Legal Consultants, may advise on the law of that foreign jurisdiction in the State of Idaho only to the extent allowed by this Rule. Although a person licensed as a Foreign Legal Consultant under this Rule shall be subject to the provisions of the Idaho Rules of Professional Conduct, the Idaho Bar Commission Rules and other rules adopted by the Idaho Supreme Court, such person shall not be considered an Idaho attorney or be an active member of the Idaho State Bar.

(a) **General Regulation as to Licensing.** In its discretion, the Idaho Supreme Court may license to practice in this State as a Foreign Legal Consultant, without examination, an applicant who:

- (1) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (2) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country;
- (3) possesses the good moral character and general fitness requisite for a member of the bar of this State; and
- (4) intends to practice as a Foreign Legal Consultant in this State and to maintain an office in this State for that purpose.

(b) **Proof Required.** An applicant under this Rule shall file with the Idaho State Bar:

- (1) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent;
- (2) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country;
- (3) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English; and
- (4) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of section (a) of this Rule as the Idaho Supreme Court may require.

(c) **Reciprocal Treatment of Members of the Bar of this State.** In considering whether to license an applicant to practice as a Foreign Legal Consultant, the Idaho Supreme Court may in its discretion take into account whether a member of the Idaho State Bar would have a reasonable and practical opportunity to obtain similar licensure for the giving of legal advice to clients in the applicant's country of admission. Any member of the Idaho State Bar who is seeking or has sought to obtain similar licensure

in that country may request the Idaho Supreme Court to consider the matter, or the Idaho Supreme Court may do so sua sponte.

(d) **Scope of Practice.** A person licensed to practice as a Foreign Legal Consultant under this Rule may render legal services in this State only with respect to the law of the foreign country in which such person is admitted to practice law subject, however, to the limitations that he or she shall not:

- (1) appear for another person as an attorney in any court, or before any magistrate or other judicial officer, in this State, other than upon admission pro hac vice pursuant to Rule 222;
- (2) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
- (3) prepare:
 - (i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or
 - (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
- (4) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
- (5) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;
- (6) be, or in any way hold himself or herself out as, a member of the bar of this State; or
- (7) carry on his or her practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:
 - (i) his or her own name;
 - (ii) the name of the law firm with which he or she is affiliated, in each case only in conjunction with the title "Foreign Legal Consultant" as set forth below;
 - (iii) his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of such country, in each case only in conjunction with the title "Foreign Legal Consultant" as set forth below; and
 - (iv) the title "Foreign Legal Consultant," which may be used in conjunction with the words "admitted to the practice of law in [the name of the foreign country of his or her admission to practice]".

(e) **Rights and Obligations.** Subject to the limitations set forth in this Rule, a person licensed as a Foreign Legal Consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

- (1) the rights and obligations set forth in the Idaho Rules of Professional Conduct and/or arising from the other conditions and requirements that apply to a member of the bar of this State under the Idaho Bar Commission Rules and/or other rules adopted by the Idaho Supreme Court; and
- (2) the rights and obligations of a member of the bar of this State with respect to:
 - (i) affiliation in the same law firm with one or more members of the bar of this State, including by:
 - (A) employing one or more members of the bar of this State;
 - (B) being employed by one or more members of the bar of this State or by any partnership, corporation or limited liability company which includes members of the bar of this State or which maintains an office in this State; and

- (C) being a partner in any partnership, shareholder in any corporation or member in any limited liability company which includes members of the bar of this State or which maintains an office in this State; and
 - (ii) attorney-client privilege, work-product privilege and similar professional privileges.
- (f) **Disciplinary Provisions.** A person licensed to practice as a Foreign Legal Consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this State and to this end:
 - (1) Every person licensed to practice as a Foreign Legal Consultant under these Rules:
 - (i) shall be subject to discipline by the Idaho Supreme Court consistent with the Idaho Rules of Professional Conduct and the Idaho Bar Commission Rules; and
 - (ii) prior to practicing as a Foreign Legal Consultant shall execute and file with the Idaho State Bar, in such form and manner as the Idaho Supreme Court may prescribe:
 - (A) his or her commitment to observe the Idaho Rules of Professional Conduct and other rules adopted by the Idaho Supreme Court to the extent applicable to the legal services authorized under section (d) of this Rule;
 - (B) an undertaking or appropriate evidence of professional liability insurance, in such amount as the Idaho Supreme Court may prescribe, to assure his or her proper professional conduct and responsibility;
 - (C) a written undertaking to notify the Idaho State Bar and Idaho Supreme Court of any change in such person's good standing as a member of the foreign legal profession referred to in section (a)(1) of this Rule and of any final action of the professional body or public authority referred to in section (b)(1) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and
 - (D) a duly acknowledged instrument, in writing, setting forth his or her physical residence or business address in Idaho and designation of the Clerk of the Idaho Supreme Court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of Idaho, whenever after due diligence service cannot be made upon him or her at such address or at such new address in Idaho as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.
 - (2) Service of process on the Clerk of the Idaho Supreme Court, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of \$10. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the Foreign Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such Foreign Legal Consultant at the address specified by him or her as aforesaid.
- (g) **Application and Renewal Fees.** An applicant for a license as a Foreign Legal Consultant under this Rule shall pay an application

fee, which shall be equal to the fee required to be paid by a person applying for admission as a lawyer applicant of the Idaho State Bar. A person licensed as a Foreign Legal Consultant shall pay annual fees which shall be equal to the fees required to be paid by an active member of the bar of this State for renewal of his or her license to engage in the practice of law in this State. IBCR 304 shall apply to those licensed as Foreign Legal Consultants under this Rule. Failure to comply with the licensing requirements reflected in IBCR 304 will result in immediate cancellation of licensure as a Foreign Legal Consultant.

- (h) **Revocation of License.** In the event that the Idaho Supreme Court determines that a person licensed as a Foreign Legal Consultant under this Rule no longer meets the requirements for licensure set forth in this Rule, or has failed to meet the obligations imposed by this Rule, it shall revoke the license granted to such person hereunder.
- (i) **Admission to Bar.** In the event that a person licensed as a Foreign Legal Consultant under this Rule is subsequently admitted as a member of the bar of this State under the provisions of the Rules governing such admission, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this State.
- (j) **Application for Waiver of Provisions.** The Idaho Supreme Court, upon application, may in its discretion vary the application or waive any provision of this Rule where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.
**(Rule 205A added 3-17-05 effective 7-1-05)*

RULE 206. Investigation of Applicants

- *(a) **Authority to Investigate.** The Board shall make, or cause to be made, such investigation of each applicant's moral character and fitness to practice law as the Board, in its discretion, deems appropriate, including the authority to require each applicant for the Idaho Bar Examination to provide a set of his/her fingerprints and submit to a criminal background investigation.

**(Section (a) amended 6-9-88 effective 7-1-88)*

- *(b) **Early Application.**
 - (1) Any prospective applicant for admission to the Idaho State Bar who is presently enrolled in an approved law school may file an early application, solely directed to gaining a determination of that person's character and fitness for admission. Such an early application will not substitute for any portion of the regular bar application process, and any person filing such an early application shall still be required to complete all application materials at time of application.
 - (2) Decision. After due consideration of an early application, as provided in subsection (c) below, the Board of Commissioners may:
 - (A) Approve the application, with conditions where appropriate, provided that the applicant shall remain subject to all other qualifications for admission to practice;
 - (B) Deny the application, whereupon the early applicant may request a show cause hearing pursuant to Rule 209(c), et. seq.; or
 - (C) Determine that the application is not ripe for consideration and decline to rule on the application. No appeal shall be available from a declination to consider an early application.
 - (3) A decision to approve the application pursuant to subsection (2)(A) above shall be binding only as to the facts and circumstances under consideration at the time and shall not prevent consideration of undisclosed conduct, subsequent

conduct prior to admission or consideration of past facts and circumstances (including those already reviewed as part of an early application) which relate to subsequent conduct either directly or indirectly.

- (4) A denial issued pursuant to subsection (2)(B) shall not prevent a person from filing a bar admission application at a later date.
- (5) With approval of the Board of Commissioners the Executive Director may establish a nonrefundable early application fee.

**(Section (b) added 6-10-98 - Effective 7-1-98)*

***(c) Reference of Application for Investigation.** The Board may refer any application for admission to practice law or early application to the Committee on Character and Fitness or to the Bar Counsel for the purpose of investigating and making recommendations on any matter connected with the application or early application.

- (1) **Appearance of Applicant.** An applicant for permission to take the bar examination or for admission to practice law may be required to appear before the Board, the Committee, or Bar Counsel, upon reasonable notice and submit to an examination touching any matter deemed relevant by the Board, Committee or Counsel to a proper consideration of the pending application.

(A) **Failure to Appear.** Failure to appear before the Board, Committee or Counsel as directed shall be sufficient reason for rejection of the application.

***(d) Certificate Permitting or Denying Examination.**

- (1) **Permitting Examination.** The Executive Director shall mail the applicant a certificate permitting him or her to sit for the Bar Examination if:

(A) no written objection to the applicant's admission as provided in Rule 215 has been filed; and

(B) it has been determined that the applicant meets the examination and admission requirements provided in these Rules.

- (2) **Denying Examination.** If the applicant fails to meet the examination and admission requirements, written notice thereof shall be given to the applicant as provided in Rule 219(G).

- (3) No person shall be permitted to take an examination unless he or she presents, at the time of examination, a valid Certificate Permitting Examination.

- (4) **Validity.** A certificate permitting examination shall be valid for the examination for which it is issued.

**(Sections (c) & (d) amended 6-10-98 - Effective 7-1-98; Section (d) amended 8-12-03)*

RULE 207. Committee on Character and Fitness

***(a) Establishment and Membership of Committee.** The Board of Commissioners of the Idaho State Bar, shall appoint a nine (9) member committee to be known as "The Idaho State Bar Committee on Character and Fitness" which shall consist of members in good standing of the Idaho State Bar and non-lawyer members.

- (1) **Terms of Office.** Members of the Committee shall serve for terms of three (3) years provided that appointments shall allow for staggered expiration of terms.

- (2) **Subsequent Terms.** The composition of the Committee shall be maintained by the appointment of seven (7) lawyers and two (2) adult Idaho citizens who are not lawyers of like credentials as those appointed to initial membership on the Committee.

- (3) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as Vice-chairman. The Chairman shall be responsible for

calling and presiding over meetings of the Committee. The Chairman of the Committee or, in his or her absence, the Vice-chairman shall certify all recommendations concerning applicants to the Board. The Executive Director, or his or her designee, shall serve as Secretary to the Committee on Character and Fitness.

- (4) **Powers and Duties.** The Committee shall have the following powers and duties:

(A) To receive and consider applications, together with any other materials relevant to the applications, which are referred to it by the Board.

(B) To receive and consider applications, together with any other materials relevant to the applications, to which an objection as provided in Rule 215 has been filed;

(C) To conduct hearings on the formal review of an applicant's character and fitness; and

- (5) **Meetings.** The Committee shall act upon each application at a duly convened meeting at which a quorum is present; provided, however, the members of the Committee may separately and without assembling in meeting consider any application together with the data submitted in support of such application, and may approve or disapprove an application by a written or oral poll conducted by the Chairman. Any unanimous action of the Committee so taken shall constitute valid action, but if such action is not unanimous, the Committee shall further consider and act upon such application in a meeting duly convened.

- (6) **Quorum.** Five (5) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.

- (7) **Compensation and Expenses.** The members of the Committee on Character and Fitness shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.

- (8) **Vacancies.** Vacancies during a term shall be filled by the Board for the remainder of the unexpired term.

- (9) **Recommendations.** The Committee may recommend approval or rejection of the application.

- (10) **Reports.** The Committee shall file with the Board a complete report, including its recommendation setting forth the grounds and evidentiary basis therefor and a record of its proceedings, as to approval or disapproval of each application for admission referred to the Committee. The Chairman shall simultaneously therewith return to the Executive Director all materials relating to each application under consideration.

(A) **Time for Filing.** Recommendations on complete applications shall be filed with the Board no later than fifty-six (56) days after the application is referred to the Committee, or at least twenty-one (21) days before the examination at which the applicant proposes to sit, whichever is earlier.

- (11) **Costs of Proceedings.** Costs and expenses of any proceeding for review of character and fitness shall be borne by the applicant whose qualifications are under review.

- (12) **Committee Report.** The Committee report described in section (10) above is advisory in nature, and shall be considered by the Board of Commissioners as provided in Rule 209. The applicant shall not be entitled to review said report, nor shall it be available through discovery in the event of an appeal.

- (13) **Representation of Board.** Bar Counsel shall act as staff counsel to the Board and to the Committee on Character and Fitness in any character and fitness proceedings under these Rules.

**(Section (a) amended 3-1-88 and 12-16-03)*

***RULE 207A. Committee on Reasonable Accommodation.**

- (a) **Establishment and Membership of Committee.** The Board of Commissioners of the Idaho State Bar, shall appoint a three (3)-member committee to be known as "The Idaho State Bar Committee on Reasonable Accommodation" which shall consist of two members in good standing of the Idaho State Bar and one non-lawyer.
- (1) **Terms of Office.** Members of the Committee shall serve at the pleasure of the Board of Commissioners, for staggered three (3)-year terms ending on June 30 of each year, with the initial appointments made to insure a rotation for replacement of one position each year.
- (2) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as Vice-chairman. The Chairman shall be responsible for calling and presiding over meetings of the Committee. The Chairman of the Committee or, in his or her absence, the Vice-chairman, shall certify all recommendations concerning applicants to the Board. The Executive Director shall provide a Secretary to the Committee.
- (3) **Powers and Duties.** The Committee shall have the following powers and duties:
- (A) To receive requests for reasonable accommodation and to request and receive any other materials relevant to the request.
- (B) To review, investigate and analyze requests received and to make recommendations to the Board of the Commissioners.
- (4) **Meetings.** The Committee shall act upon each request at a duly convened meeting at which a quorum is present; provided, however, the members of the Committee may separately and without assembling in meeting consider any request together with the data submitted in support of such request, and may recommend approval, disapproval or modification of a request by a written or oral poll conducted by the Chairman.
- (5) **Quorum.** Two (2) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.
- (6) **Compensation and Expenses.** The members of the Committee on Reasonable Accommodation shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
- (7) **Reports.** The Committee shall file with the Board a complete report, including its recommendation setting forth the grounds and evidentiary basis therefor and a record of its proceedings, as to approval, disapproval or modification of each request for accommodation submitted to the Committee.
- (8) **Committee Report.** The Committee report described in section (7) above is advisory in nature, and shall be considered by the Board of Commissioners as provided in Rule 209. Unless permitted by the Board of Commissioners, the applicant shall not be entitled to review said report, nor shall it be available through discovery in the event of an appeal.
- (9) **Representation of Board.** Bar Counsel shall act as staff counsel to the Board and to the Committee on Reasonable Accommodation in any proceedings under these Rules.

**(Rule 207A added 6-10-98 - Effective 7-1-98)*

RULE 208. Standards for Disqualification. The following shall constitute criteria to be applied for disqualification of an applicant:

- (a) The conviction of a felony or misdemeanor under state or federal criminal law which under Idaho law would be grounds for suspension or disbarment of a practicing attorney.
- (b) The commission of acts while a juvenile which, if done by an adult, would be the equivalent of crimes referred to in Rule 505(b), unless special circumstances excuse the applicant.
- (1) A final decision having the legal effect of acquitting an applicant of charges of the nature above specified, shall not affect the right of the Committee to give consideration to the conduct of applicant evidenced in connection therewith, unless the decision is directly on the merits and unless the decision on the merits necessarily negates any immoral or unethical conduct.
- (c) The doing of any act which would be considered a crime except as excused by mental condition.
- (d) Any conduct of a kind which, in the past, has been considered by the Idaho Supreme Court as grounds for suspension or revocation of the right to practice law in this state.
- (e) Any conduct which, in the judgment of the Committee, demonstrates the applicant has exhibited conduct substantially evidencing an inclination:
- (1) To be dishonest;
- (2) To take unfair advantage of others;
- (3) To be disloyal to those to whom loyalty is legally owed;
- (4) To be irresponsible in business or professional matters;
- (5) To support or advocate the overthrow of the government of the United States by force;
- (6) To engage unlawfully in the practice of law while not being so licensed;
- (7) To violate reasonable rules of conduct governing any activity in which applicant has been engaged.
- (8) To fail to exercise substantial self-control, including excessive and continuing violation of traffic rules, the improper use of drugs, and the excessive use of alcohol;
- (9) To be mentally or emotionally unstable to the extent that in the opinion of the Committee the applicant is not suited to the practice of law.
- *(f) Any conduct or condition which demonstrates the absence of one or more of the essential eligibility requirements for the practice of law as set forth in Rule 200A.*
- *(Section (f) added 6-10-98 - Effective 7-1-98)*
- *(g) The following conduct, while not proper, will not in and of itself, be considered as indicating a lack of moral character or general fitness:*
- (1) Traffic violations unless involving substantial disregard of the rights of others or evidencing substantial or continuing lack of self-discipline;
- (2) Conduct involving domestic relations disputes unless under circumstances indicating violation of criminal law or disregard of moral obligations under circumstances where no reasonable provocation exists;
- (3) Conduct involving boisterous or rowdy behavior;
- (4) Misconduct remote in time unless felonious in nature or recently repeated in similar acts.
- *(Section (g) amended 3-1-88 and 6-10-98 - Effective 7-1-98)*

***RULE 208A. Reasonable Accommodation.**

- (a) It shall be the policy of the Idaho State Bar to administer the bar examination and all related services provided by its office in a manner that does not unlawfully discriminate against a qualified applicant with a disability.
- (b) **Definitions.** For the purpose of this Section, the following definitions apply:
- (1) "Disability" means any of the following:

- (A) A physical or mental impairment that substantially limits one or more of the major life activities of the applicant.
- (B) A record of having such impairment.
- (C) A record of having been regarded as having such an impairment.
- (2) "Physical impairment" means disorder or condition or anatomical loss affecting one or more of the body's systems.
- (3) "Mental impairment" means a mental or psychological disorder generally recognized by the medical community.
- (4) "Qualified applicant with a disability" means an applicant with a disability who is capable of demonstrating the essential eligibility requirements set forth in Rule 200A, with:
 - (A) reasonable modifications to rules, policies or practices;
 - (B) removal of architectural, communication or transportation barriers; and/or
 - (C) provision of auxiliary aids and services.
- (5) "Reasonable accommodation" means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without doing any of the following:
 - (A) fundamentally altering the nature of the examination or the Idaho State Bar's ability to determine through the bar examination whether the applicant possesses the "essential eligibility requirements" for the practice of law in Idaho, as set forth in Rule 200A;
 - (B) imposing an undue burden on the Idaho State Bar;
 - (C) compromising the security of the bar examination; or
 - (D) compromising the validity of the examination.
- *(c) Requests for reasonable testing accommodation must be submitted on forms prescribed by the Board with the application of examination and admission. The applicant shall provide such information as requested by the Board or by the Committee on Reasonable Accommodation.
- *(Section (c) amended 11-3-99 – Effective 1-1-2000)
- *(d) If an applicant becomes disabled after the timely submission of an application for examination and admission and such applicant seeks reasonable accommodation in testing on account of such disability, the applicant shall file an emergency request for reasonable testing accommodation on forms prescribed by the Board.
- *(Section (d) added 11-3-99 – Effective 1-1-00)
- *(Rule 208A added 6-10-98 - Effective 7-1-98)

RULE 209. Action by Board

- *(a) **Following Committee Recommendation.** On matters relating to admissions and administration of the bar examination, the Board, after receiving the recommendations of the Committee on Character and Fitness, the Committee on Reasonable Accommodation or Bar Counsel, or on its own motion, may take such action as it deems appropriate in the circumstances, including:
 - (1) approve or modify the application or request;
 - (2) issue an order denying the application or request unless the applicant requests a hearing to show cause why the application should not be denied;
 - (3) issue an order recommending conditional admission, unless the applicant requests a hearing to show cause why the conditions should not be imposed; or
 - (4) request further investigation.
- *(Section (a) amended 4-13-94 - Effective 7-1-94, amended 6-10-98 - Effective 7-1-98, and amended 3-31-00)
- (b) **Notice of Board Determination.** The Executive Director shall notify the applicant, in writing with a statement of the reasons for the Board's action, and cause the same to be served upon the applicant personally or by certified mail, return receipt requested.

Notice shall be deemed complete on the date of receipt as noted upon the return of service or return receipt.

- *(c) **Show Cause Hearing.** An applicant may request a hearing to show cause, as provided in subsection (a) above, by filing with the Executive Director a written petition within twenty-one (21) days after the applicant has been notified of any action by the Board.

*(Section (c) amended 4-13-94 - effective 7-1-94; amended 6-10-98 - effective 7-1-98, and amended 3-31-00)

- *(d) **Record.** The show cause hearing shall be conducted upon the record previously developed by the Committee on Character and Fitness or Committee on Reasonable Accommodation; provided, however, that the record can be supplemented by additional evidence from the applicant or other sources.

- *(e) **Hearing.** The show cause hearing shall be scheduled at a time convenient to the applicant and the Board, at which meeting the applicant may personally appear. The hearing shall be conducted in an informal manner reasonably calculated to protect the rights of the applicant and the Board. The Board may, in its discretion, appoint a hearing officer to compile any or all the record.

- (1) **Notice.** The Executive Director shall give the applicant written notice of the hearing at least fourteen (14) days in advance of the hearing, stating the date, time and place of the hearing. The notice shall advise the applicant that he or she is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his or her own behalf.

*(Sections (d) & (e) amended 3-1-88, 4-13-94 - effective 7-1-94; and 6-10-98 - effective 7-1-98)

- *(f) **Decision.** Upon completion of the hearing before the Board, the Board shall enter its decision within fourteen (14) days. As to character and fitness denials, the Board's decision shall be final unless the applicant whose application has been denied files a petition for review with the Court as provided in Rule 213. Conditional admission recommendations shall be forwarded to the Supreme Court as provided in Rule 213.

*(Section (f) amended 4-13-94 - effective 7-1-94; amended 6-10-98 - effective 7-1-98; and amended 3-31-00)

***RULE 209A. Conditional Admission**

- (a) Upon recommendation from the Board of Commissioners ("Board") to the Supreme Court, an applicant may be granted conditional approval of present good moral character and fitness after meeting all other requirements under these Rules when it is determined that the protection of the public requires the temporary monitoring of the applicant in question.
- (b) In recommending that the Supreme Court issue a conditional license to practice law, the Board shall recommend specific conditions of the license, to be fulfilled at the applicant's expense, which may include, but are not limited to the following:
 - (1) prohibiting the use of alcohol or controlled substances;
 - (2) requiring treatment for alcohol or other chemical dependency, by professionals approved by the Board;
 - (3) requiring the individual to practice law under the supervision of an attorney admitted to the Idaho State Bar and prescribing the terms and conditions of supervision;
 - (4) requiring submission to periodic, random drug testing;
 - (5) requiring the individual to report periodically to the Board or its designee;
 - (6) requiring suspension, for any portion of the probationary period, of an activity for which a license to practice law is required;
 - (7) requiring the individual to take specific actions designed to cure or end any deficiencies in his or her moral character and fitness;

- (8) requiring the applicant, upon request at any time during the period of the conditional admission, to provide business or personal financial records.
- *(c) Conditional licenses shall expire as follows:
 - (1) Conditional license shall expire on the date specified in the order recommending issuance of the conditional license, unless temporarily extended hereunder.
 - (2) The term of a conditional license may be temporarily extended, upon the request of the conditional licensee, in the event that the normal expiration date fails before the Board has had the opportunity to recommend a redetermination as provided hereunder.
 - (3) Upon the issuance of an order to show cause, as provided in subsection (e) below.
- *(Section (c) amended 12-5-02)
- (d) A conditional licensee may apply for a renewal of the conditional license or for a regular license to practice law, by filling a written request therefore, at least sixty (60) days prior to the expiration date of the conditional license.
- *(e) Notwithstanding any other provision of this Rule, a conditional license may be immediately terminated in the following circumstances and by the following procedures:
 - (1) If the Idaho State Bar has reason to believe that a conditional licensee is in breach of a condition of the license, it may petition the Supreme Court for an order to show cause why the conditional license should not be immediately terminated.
 - (2) The Court shall examine the petition and determine whether a *prima facie* showing of a breach of the conditional license has been demonstrated. If the Court determines that such a showing has been made, it shall immediately suspend the conditional license and shall issue an order to show cause why the license should not be permanently revoked.
 - (3) The conditional licensee may indicate an intent to contest the revocation of the conditional license by filing a verified response to the order to show cause, in which case the Supreme Court shall assign the matter to a Hearing Committee of the Professional Conduct Board or to a special master for hearing and recommendation.
 - (4) If the Supreme Court assigns the matter to the Professional Conduct Board, that proceeding shall be conducted as provided in Rule 511, except that the order to show cause and verified response shall serve as the complaint and answer.
- *(Section (e) amended 12-5-02)
- (f) The Board may require any conditional licensee issued a conditional license because of a determination of chemical dependency, prior to the redetermination hearing, to submit to an evaluation at the sole cost of the conditional licensee, by a treatment facility or professional approved by the Board.
- (g) After consideration of a request under subsections (d) or (e) above, the Board may:
 - (1) recommend, upon a finding of the requisite good moral character and fitness, the issuance of a regular license to practice law in Idaho; and
 - (2) recommend, upon a finding that a condition of the conditional license has been violated or for other good cause shown:
 - (A) extension of the conditional license; or
 - (B) termination or immediate revocation of the conditional license.
- (h) The Committee on Character and Fitness, the Committee on Reasonable Accommodation and the Board of Commissioners may employ the provisions of this Rule as part of any other proceedings held under this section of the Rules.
- (i) Confidentiality.

- (1) All proceedings concerning consideration of and granting of a conditional license shall be confidential, as provided by Rule 218.
- (2) The Supreme Court shall seal records concerning the terms of a conditional license, unless special circumstances warrant making the matter open for public examination.
- (3) Nothing in this section or in Rule 218 shall be interpreted to prevent use of such information by the Idaho State Bar in any subsequent discipline proceeding.

*(Rule 209A added 6-10-98 - Effective 7-1-98)

***RULE 210. Examination.** No person except one who is subject to the provisions for reciprocal admission found in Rule 204A shall be admitted to practice law in this state until he or she has applied for permission to take and has passed the Idaho State Bar Examination as provided in these Rules.

*(a) **Student Applicants.** Student applicants, as defined in Rule 200(N), shall be required to complete a bar examination consisting of the Multistate Bar Examination (MBE), Multistate Essay Examination (MEE), Multistate Performance Test (MPT), and an essay examination as provided in subsection (e) of this Rule.

*(Section (a) amended 11-13-89)

*(b) **Attorney Applicants.** An attorney applicant, as defined in Rule 200(B), shall not be required to take the Multistate Bar Examination, provided that on the date of application he or she has actively practiced law for at least 5 of the last 7 years. Such applicant shall be required to take and successfully complete the essay, Multistate Essay, and Multistate Performance Test portions of the examination.

*(Section (b) amended 3-1-88, 11-13-89 and 11-3-99 – Effective 1-1-00)

*(c) **Transfer of MBE Score.** In lieu of taking the Multistate Bar Examination, applicants may transfer a Multistate Bar Examination scores (but not an MEE score or an MPT score) from another jurisdiction, if taken within the last 25 months prior to the date of the exam, under terms and conditions prescribed by the Board of Commissioners. Unsuccessful prior Idaho applicants may also elect to transfer an MBE score from a prior Idaho examination, if taken within the last 25 months prior to the date of the exam, under terms and conditions prescribed by the Board of Commissioners. An applicant who elects not to transfer a prior score and chooses to sit for the MBE may not subsequently substitute a prior score on that examination.

*(Section (c) added 3-1-88; amended 11-13-89; amended 6-10-98 - Effective 7-1-98; and amended 5-28-02 – Effective –7-1-02)

*(d) **Times and Places of Examination.** The Idaho State Bar Examination shall be administered twice each year at times and places to be set by the Board. Each examination shall be administered over a period of two and one half (2 1/2) consecutive days. One day of the examination will be devoted to giving the Multistate Bar Examination (MBE) prepared by the National Conference of Bar Examiners, one day of the examination will consist of essay questions, including the Multistate Essay Examination prepared by the National Conference of Bar Examiners, covering the topics set forth in the Standards and Guidelines for Drafting Bar Examination Questions as adopted by the Idaho Supreme Court, and one half day of the examination will consist of the Multistate Performance Test prepared by the National Conference of Bar Examiners.

*(Section (d) amended 3-1-88 and 11-13-89)

*(e) **Preparation for the Examination.** The Board may utilize the services of volunteer members of the Bar or of expert draftsmen to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including out-of-state law teachers, or by using the services of the National Conference of

Bar Examiners or other national agency. Whether drafted by a Bar member or by expert draftsmen, essay questions shall be prepared in compliance with the Standards and Guidelines for Drafting Bar Examination Questions as adopted by the Idaho Supreme Court. MEE and MPT questions shall be prepared by the National Conference of Bar Examiners.

**(Section (e) amended 11-13-89)*

**(Sections (a)-(e) amended 3-31-00 – effective 7-1-01)*

(f) **Conduct of Examinations.** Bar examinations shall be held under the supervision of the Board, which shall be in actual charge thereof through the Executive Director. The Executive Director may appoint such number of monitors as is deemed necessary to assist in conducting the examinations.

**(g) Mode of Examination.*

(1) **Identification.** The Board shall utilize an identification procedure which shall insure the anonymity of the examinees throughout the examination and grading process.

(2) **Conduct of Examination.** Applicants shall not use any books, memoranda, notes, or any material or devices to assist them in answering questions. All questions shall be answered solely from the applicant's own knowledge and without assistance from any other source.

(A) **Penalty for Violation.** Any applicant violating this Rule, or knowingly assisting another applicant in a violation of this Rule, shall be given an automatic failing grade on the entire examination. The circumstances of such violation may be considered by the Board as grounds for barring such applicant from retaking the Idaho State Bar Examination at a later session.

(3) **Handling of Examination Papers.** At the beginning of each examination session, the examiner shall deliver to the applicants a copy of the questions to be answered at that session. The Multistate Bar Examination (MBE) and the Multistate Essay Exam (MEE), and Multistate Performance Test (MPT) shall be administered in the manner prescribed therefor. No questions, answer sheets, or other materials relating to the MBE, MEE, or MPT shall be copied or removed from the examination room. Answers to the essay questions shall be typed or written on paper supplied by the Board. The applicant shall write all answers legibly in ink or by computer. The applicant must label and number his or her answers to correspond with the subject matter and numbers of that part of the examination and shall consecutively number each page of his or her answers to each part of the examination.

(4) **Anonymity of Grading.** Applicants shall not identify, or attempt to identify themselves, their identification numbers, or their answers to any member of the Board or any other person. Applicants shall not in any manner attempt to influence the grading of their examinations.

(A) **Penalty for Violation.** If an applicant violates or attempts to violate this Rule, he or she shall be given an automatic failing grade on the entire examination. The circumstances may be considered by the Board as grounds for barring such applicant from retaking the Idaho State Bar Examination at a later session.

(5) **Monitors.** Monitors shall perform such duties as are assigned to them by the Board. Their purpose shall be to facilitate the conduct of the examination and to insure its integrity. Monitors shall not discuss, under any circumstances, the content of the examination with an applicant. Any question relating to the examination shall be referred immediately to the Board, a member of the Examination Preparation Committee, or Bar Counsel.

**(Section (g) amended 11-13-89 and 8-12-03)*

**(h) Grading of the Examination.* All bar examinations shall be graded and reviewed under the direction of the Board in accordance with the Bar Examination Grading Standards and Procedures adopted by the Supreme Court.

(1) **Passing Grade.** A passing grade upon the Bar Examination shall be a grade of not less than 70% of the highest possible grade, determined as provided by the Bar Examination Grading Standards and Procedures. The essay examination, including the MEE, and MPT shall constitute 2/3 of the available points and the Multistate Bar Examination shall constitute 1/3 of the available points.

(2) **Reevaluation.** The examination paper of an applicant whose score falls within the range of 66-2/3% to 70% of the highest possible score shall be reviewed as provided by the Bar Examination Grading Standards and Procedures.

**(Section (h) amended 3-1-88 and 11-13-89)*

**(Section (g) & (h) amended 3-31-00 – effective 7-1-01)*

(i) **Examination Results.** Upon a determination by the Board that an applicant possesses all of the requirements of eligibility for admission to the Bar and that he or she has successfully passed the Bar Examination, the Board shall forthwith certify to the Supreme Court that such applicant is eligible for admission.

(1) **Notice to Applicant.** The Executive Director shall forthwith notify, in writing, each applicant whether he or she has passed or failed the examination. Such notice shall be provided to applicants who fail to receive a passing grade by registered or certified mail, return receipt requested.

(j) **Request for Copies of Examination.** An applicant who has failed the Bar Examination shall have the right to review his or her examination grades; the questions, suggested analyses and his or her answers to the essay questions; the Standards and Guidelines for Drafting Bar Examination Questions; and the Bar Examination Grading Standards and Procedures. Such applicant shall have the right to make copies of said documents in the State Bar Office or, at the request of the applicant, the Executive Director may cause copies thereof to be made. A reasonable copying cost shall be paid by the applicant at the time the copies are obtained.

(k) **Destruction of Examinations.** All examination papers shall be destroyed by the Executive Director:

(1) thirty (30) days following receipt by the applicants of the notice of examination results, as shown by the last date on the return receipts from unsuccessful applicants, unless a petition for review, as provided in Rule 213, has been filed by one (1) or more unsuccessful applicants.

(2) ninety (90) days after a final determination of the petition for review filed by one (1) or more unsuccessful applicants has been made by the Supreme Court, unless the applicant has filed an appeal with the United States Supreme Court.

(3) immediately following the United States Supreme Court's denial of certiorari or its final determination of any appeal granted.

**(Rule 210 amended 8-12-03)*

RULE 211. Re-Examination. Any applicant who has failed the Idaho State Bar Examination may apply for re-examination as hereinafter provided. The applicant must disclose whether he or she has failed the Bar Examination on previous occasions.

**(a) First Re-examination.* Any applicant who fails his or her first examination shall be allowed to take the next scheduled examination without additional clearance as to character and fitness. The applicant must file an application for re-examination on a form prescribed by the Board. If the applicant seeks reasonable accommodation in testing on account of disability, the applicant must file such request on forms prescribed by the Board

with and in the same time frame allowed for the application for re-examination.

*(1) **Time for Filing.** The application for first re-examination must be filed with the Executive Director at least forty-five (45) days prior to the next scheduled Bar Examination.

*(Section (1) amended 8-31-94 effective 9-1-94)

*(2) **Fee.** A re-examination fee of two hundred dollars (\$200.00) must accompany the application for re-examination.

*(Section (2) amended 1/6/97 and 1/30/98)

*(Section (a) amended 11-3-99 – Effective 1-1-00)

*(b) **Subsequent Re-examination.** Any applicant who fails to achieve a passing grade upon the first re-examination must file an application for re-examination on a form prescribed by the Board. The Board, in its discretion, may require further investigation of such applicant's character and fitness. If the applicant seeks reasonable accommodation in testing on account of disability, the applicant must file such request on forms prescribed by the Board with and in the same time frame allowed for the application for re-examination.

(1) **Time for Filing.** An application for re-examination under this Rule must be filed with the Executive Director prior to the filing deadline provided in Rule 211(A)(1).

(2) **Fees.** An application for re-examination under this Rule must be accompanied by:

*(A) A re-examination fee of two hundred dollars (\$200.00); and

*(Section (A) amended 1/6/97 and 1/30/98)

(B) An investigation fee of One Hundred Fifty Dollars (\$150.00) in the event the Board determines that further investigation of the applicant's character and fitness is required.

*(Section (b) amended 11-3-99 – Effective 1-1-00)

*(c) **Re-examination in Excess of Three.** An applicant who has failed three or more bar examinations in any jurisdiction shall not be eligible to apply for examination or re-examination in Idaho until he or she has:

(1) filed a written request for special permission to take the bar examination; and

(2) demonstrated to the satisfaction of the Board that there has been a substantial change in the degree of his or her legal learning which makes it probable that he or she will pass the Bar Examination; and

(3) been notified, in writing pursuant to Rule 219(G), that special permission to retake the Bar Examination has been granted by the Board.

*(4) submitted a re-examination fee of two hundred dollars (\$200.00); and

*(Section (4) amended 11-3-99 – Effective 1-1-00)

*(5) an investigation fee of one hundred fifty dollars (\$150.00) in the event the Board determines that further investigation of the applicant's character and fitness is required.

*(Sections (4) and (5) added 1/6/97)

*(Section (c) amended 3-1-88, 3-15-91, and 4-13-94 - effective 7-1-94)

(d) **Review by the Supreme Court.** All decisions of the Board are final, subject to review by the Supreme Court as provided in Rule 213.

RULE 212. Deferment

*(a) **First Deferment.** An applicant who, after filing an application for examination, finds he or she is unable to take the examination on the prescribed date may submit to the Board a written request for deferment to the subsequent examination date accompanied by a filing fee of fifty dollars (\$50.00).

(b) **Second Deferment.** An applicant may request an additional deferment by submitting a written request to the Executive

Director, accompanied by a filing fee of one hundred dollars (\$100.00).

*(Sections (a) & (b) amended 1/6/97)

*(c) **Failure to Take Examination After Second Deferment.** No more than two (2) total deferments shall be granted per bar application. For the purpose of this rule, multiple administrations of the bar examination, including those re-examinations, as provided by Rule 211, occasioned by failure to attain a passing score, shall be considered a single "bar application". Any applicant who fails to take the examination after receiving two (2) deferments shall be required to file a new application and pay the regular application fee for the subsequent examination.

*(Section (c) amended 11-15-00 – Effective 12-1-00; and amended 12-5-02)

(d) **Re-investigation.** If an applicant requests additional deferments, the Board, in its discretion, may require a re-investigation of the applicant's character and fitness and the payment of an additional investigation fee pursuant to Rule 202(a)(2)(B) or 204(a)(2)(B).

*(Section (d) amended 3-17-05)

(e) **Failure to Appear for Examination.** Failure on the part of an applicant to appear for an examination without first requesting deferment will result in the application being dismissed and the applicant shall be required to file a new application and pay the regular application fee for the subsequent examination.

*(f) **Denial.** The Board may, in its discretion, deny a request for deferment.

*(g) **Withdrawal.** Withdrawal of an application after an adverse character and fitness determination under Rule 209(b) or 209(f), or withdrawal of an application after objection under Rule 215(c)(2) shall not be considered a deferment.

*(Sections (f) & (g) added 3-1-88)

RULE 213. Review by the Supreme Court

*(a) **Grounds for Review.** Said petition shall be reviewable by the Supreme Court only if it is alleged that through the arbitrary and capricious action of the Board, or that by reason of a substantial failure to comply with the Standards and Guidelines for Drafting Bar Examination Questions or Bar Examination Grading Standards and Procedures adopted by the Supreme Court, such applicant was:

(1) Denied admission based upon an adverse determination relative to character and fitness; or

(2) Denied a passing grade on the Bar Examination; or

*(3) Denied a certificate of eligibility for admission upon any other grounds; or

*(4) Denied a request for reasonable accommodation.

*(Sections (3) & (4) amended 6-10-98 - effective 7-1-98)

*(b) **Petition.** Any applicant whose application has been denied by the Board may petition the Supreme Court for review of the Board's decision if he or she:

(1) files a verified petition for review setting forth with particularity the facts and acts upon which the petition is based, together with an original and six (6) copies with the Clerk of the Idaho Supreme Court.

(2) serves on the Executive Director one (1) copy of the petition.

(3) pay a filing fee as provided in Sections 1-402 and 1-2003, *Idaho Code*, to the Clerk.

(A) **Time for Filing.** Any petition for review shall be filed with the Clerk and served upon the Executive Director within twenty-one (21) days from the date of receipt of the notice of the adverse action or determination.

*(Sections (a) & (b) amended 3-1-88, Section (b) amended 9-19-96)

(c) **Answer of Board.** The Board shall have fourteen (14) days from the date of service of said petition to file a responsive pleading,

unless such time is extended by the Court upon good cause shown by the Board.

- (d) **Hearing and Arguments.** The Supreme Court may make its determination solely from the pleadings filed or may, in its discretion, order a hearing for purposes of receiving additional evidence or oral argument.
- (e) **Relief Granted.** In the event a petition is granted review under this Rule, and in the further event that upon such review the Supreme Court makes an express finding that the Board acted in an arbitrary or capricious manner, or that the Board failed to comply substantially with the Standards and Guidelines for Drafting Bar Examination Questions or with the Bar Examination Grading Standards and Procedures, and that by reason thereof the applicant was denied a certificate permitting examination, a passing grade on the Bar Examination, or a certificate of eligibility for admission upon any other grounds, the Court will grant appropriate relief in the circumstances. Such relief may include:
- (1) An order granting a certificate of admission;
 - (2) An order granting a certificate permitting examination; or
 - (3) An order granting such other relief as the Supreme Court deems just and proper in the circumstances.

*(f) **Conditional Admission.** Upon receipt of an order from the Board of Commissioners recommending conditional admission, as provided in Rule 209A, the Supreme Court shall consider the matter in the following manner:

- (1) If the applicant did not request a show cause hearing before the Commission, the matter shall be considered submitted and the Court may immediately proceed to consider the recommendation without further input from the parties;
- (2) If a show cause hearing was conducted before the Commission, the applicant shall, within fourteen (14) days, notify the Court of any objection to the recommendation by filing made with the Clerk;
- (3) In either (1) or (2) above, the Court may, in its discretion
 - (A) issue an order on the basis of the existing record;
 - (B) request briefs and/or oral argument;
 - (C) remand the matter to the Commission for further consideration;
 - (D) take such other action as it may deem appropriate.

*(Section (f) added 3-31-00 and amended 12-5-02)

RULE 214. Procedure for Admission. Following certification of eligibility for admission to the Supreme Court and if no written objections to an applicant's admission is filed with the Court as provided in Rule 215, the Clerk of the Supreme Court shall give written notice to the applicant requiring him or her to appear in person before the Court within six (6) months from the date of mailing of such notice to take the oath of admission. If within such period the applicant shall appear at a time when the Court is not in session, the oath may be administered by the Clerk or by any individual justice of the Court.

*(a) **Oath or Affirmation.** The oath or affirmation upon admission is as follows: I DO SOLEMNLY SWEAR THAT: (I do solemnly affirm that:) I will support the Constitution of the United States the Constitution of the State of Idaho.
I will abide by the rules of professional conduct adopted by the Idaho Supreme Court.
I will respect courts and judicial officers in keeping with my role as an officer of the court.
I will represent my clients with vigor and zeal, and will preserve inviolate their confidences and secrets.
I will never seek to mislead a court or opposing party by false statement of fact or law, and will scrupulously honor promises and commitments made.

I will attempt to resolve matters expeditiously and without unnecessary expense.

I will contribute time and resources to public service, and will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed.

I will conduct myself personally and professionally in conformity with the high standards of my profession.

SO HELP ME GOD. (I hereby affirm.)

*(Section (a) rescinded and replaced 11-7-90)

(b) **Certificate of Admission.** An applicant who has been certified to the Court as having the qualifications for admission to the practice of law in this state, shall be enrolled as a member of the Idaho State Bar and issued a certificate of admission:

- (1) upon taking the oath required by *Idaho Code* Sec. 3-102 and provided by subsection (a) of this Rule;
- (2) upon payment of such other fees as may be required by law or rule of the Court.

(c) **Admission After Six Months.** If the applicant does not appear or present himself or herself for admission within the six (6)-month period provided by this Rule, he or she shall not be admitted unless he or she shows to the satisfaction of the Court that at all times since issuance of the certificate of eligibility for admission he or she has been, and still is, a person of good moral character.

RULE 215. Objection to Admission. Any person may file an objection to admission of any applicant seeking admission to the practice of law in the State of Idaho.

(a) **Mode of Objection.** An objection to any applicant's admission shall be made in writing, signed by the person making the objection and shall contain:

- (1) A concise, plain statement of the facts upon which the objection is based; and
- (2) Copies of any and all documentation available to the person objecting to corroborate his or her objections; and
- (3) The home and business addresses and telephone numbers of the person making the objection.

*(b) **Time and Place of Filing Objection.** An objection to an applicant's admission may be filed with the Executive Director at any time prior to the date on which the applicant is admitted.

*(Section (b) amended 3-15-91)

*(c) **Investigation.** The Board shall cause an investigation of said objection as follows:

- (1) **Notice of Objection.** In the event an objection to admission is filed as provided in this Rule, the Executive Director shall notify the applicant of the objection immediately and of the allegations made therein.
- (2) **Applicant Response.** The applicant shall file a written response to the objection with the Executive Director within ten (10) days following service of the notice or may notify the Director and the Clerk of the Court that he or she is withdrawing as a candidate for admission to the practice of law. The Executive Director shall forward a copy of the applicant's response to the person making the objection within five (5) days following receipt of the applicant's response.
- (3) Following such investigation as the Board deems appropriate, the objection may be:
 - (A) dismissed on the basis of no foundation or jurisdiction, or on the basis that the specifics of the objection have already been taken into consideration in character and fitness proceedings; or
 - (B) referred to the Bar Counsel for further investigation; or
 - (C) referred to the Committee on Character and Fitness for its review and recommendation; or
 - (D) scheduled for hearing before the Board.

*(Section (c) amended 3-1-88 and 3-15-91)

*(d) **Hearing.** The person or persons making the protest and the applicant in question may appear before the Board or Committee on Character and Fitness at a time and place to be designated by the Board or Committee. In the event time will not permit a hearing on the objection prior to the examination, the applicant may take the bar examination; however, if the applicant passes the bar examination, no license to practice law will be issued to him or her until final disposition of the objection in favor of the applicant.

*(Section (d) amended 3-15-91)

- (e) **Notice of Hearing.** The applicant and person filing the objection shall be given notice, in writing and by certified mail, return receipt requested, of the date, time and place of the hearing. Said notice shall be given at least fourteen (14) days in advance of the hearing and shall advise the applicant of his or her right to be represented by counsel, to present evidence in his or her own behalf, and to cross-examine witnesses presented by the Bar.
- (f) **Withholding Certificate.** Nothing herein contained shall prevent the Board of Commissioners, on its own motion, from withholding the certification of the applicant to sit for the bar examination until it has been fully satisfied as to the character and fitness of the applicant.

RULE 216. Subpoena Power, Witnesses, Pre-Trial Procedures

- (a) Subpoena
- (1) Pursuant to the authority of Title 3, Chapter 4, *Idaho Code*, the power to issue subpoenas, for the purposes state in Rule 45 of the *Idaho Rules of Civil Procedure*, in proceedings under these Rules under the circumstances specified, is granted as follows:
 - (A) In any proceeding under these Rules, to any member of the Board of Commissioners;
 - (B) In any proceeding pending before the Committee on Character and Fitness, to any member of said Committee;
 - (C) In the investigation or prosecution of any matter under these Rules, to Bar Counsel.
 - (2) No subpoena issued under this Rule shall be issued in blank. Each person authorized to issue subpoenas shall notify the President of the Board of Commissioners of such subpoena issued and cause a copy of each subpoena issued to be inserted in the record.
 - (3) All subpoenas shall be issued in the name of the Board of Commissioners of the Idaho State Bar.
 - (4) An applicant whose character and fitness is under review, upon reasonable and timely written request, may request subpoenas be issued on his or her behalf by contacting the President of the Board, Chairman of the Committee on Fitness and Character, or Bar Counsel.
 - (5) Failure to comply with any subpoena issued as provided in this Rule shall subject the party served therewith to any and all procedures and/or penalties provided by law and particularly provided under *Idaho Code* Sec. 3-414, Rule 45(f), *Idaho Rules of Civil Procedure*; and Title 7, Chapter 6, *Idaho Code*, or as is otherwise provided by law. The District Court of the judicial district in which the attendance or production is required, upon the petition of Bar Counsel or the applicant, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in District Court proceedings.
 - (6) Any member of the Board of Commissioners, any member of the Committee on Character and Fitness in matters pending before it, and Bar Counsel in matters under

investigation or prosecution by him or her may administer oaths and affirmations.

- (b) Discovery
- (1) Discovery shall be permitted as provided by the *Idaho Rules of Civil Procedure*. Disputes concerning the scope and other aspects of discovery shall be determined by the President of the Board or Chairman of the Character and Fitness Committee. All discovery orders by the Committee chairman are interlocutory and may not be appealed prior to the entry of the final order.
 - (2) At the discretion of the Board of Commissioners or the Committee on Character and Fitness, a pre-hearing conference may be ordered to consider matters similar to those set forth in Rule 16(a), *Idaho Rules of Civil Procedure*.
 - (3) With the approval of the Committee on Character and Fitness or the Board of Commissioners, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend to testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.
- (c) All subpoena and discovery procedures prior to the commencement of a formal proceeding shall be subject to the protective requirements of confidentiality provided in Rule 218.

RULE 217. Immunity

- (a) Objections, testimony and other presentation or arguments submitted to the Board of Commissioners or the Committee on Character and Fitness and any of their members; the Executive Director or Bar Counsel; all proceedings and conduct maintained or engaged in under these Rules; and all testimony and showings with respect to any of said matters shall be absolutely privileged and no civil litigation thereon may be instituted or maintained.
- (b) Members of the Board of Commissioners, members of the Committee on Character and Fitness, the Executive Director, Bar Counsel, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.

RULE 218. Confidentiality

- (a) All documents and files concerning applications for permission to take the bar examination and for admission to the practice of law shall be confidential.
- (b) All proceedings provided for herein shall be kept confidential until and unless the applicant waives his or her right to confidentiality either by his or her written waiver or by his or her conduct.
- (c) All participants and witnesses in the proceeding shall maintain the confidentiality of the proceeding and failure to do so shall constitute contempt of the Supreme Court.
- (d) All hearings provided for in these Rules shall be private unless the applicant makes written request that they be made public.
- *(e) Information provided to the Idaho State Bar or its committees during the investigation of the character and fitness of an applicant shall be confidential and not be available through discovery under Rule 216(b) without the express permission of the provider of that information.

*(Section (e) added 3-1-88)

RULE 219. Additional Rules of Procedure

- (a) **Records.** All original applications and other documentation relative to applicant's education, character and fitness shall be retained permanently in the office of the Idaho State Bar. The

record of a hearing shall be made available to the applicant, at applicant's expense, on written request made to the Executive Director. The records shall not be available for public inspection.

- (b) **Time Requirements.** Except as is otherwise provided in these Rules, the time in which any act or any thing is to be done or performed shall not be jurisdictional.
- (c) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the provisions of the *Idaho Rules of Civil Procedure* shall not apply in admission cases.
- (d) **Character of Proceedings.** Admission proceedings are neither civil nor criminal but are *sui generis*.
- (e) **Rules of Evidence.** The rules of evidence, generally applicable in civil actions in the District Court, shall apply during the proceedings under these Rules; except as may be otherwise provided by these Rules, any issue of fact must be proved by evidence that is clear and convincing.
- (f) **Burden of Proof.** The burden to prove that he or she is qualified for and entitled to admission to the Bar shall be upon the applicant.
- (g) **Service of Notices.** Service of any notice upon an applicant and/or a petitioner required by these Rules shall be by personal service or by registered or certified mail, return receipt requested, addressed to the applicant at his or her place of residence as stated in his or her application, or such address as has been furnished to the Executive Director, in writing, at the Offices of the Idaho State Bar.
- (h) **References.** When the Supreme Court has occasion to make a finding of fact in proceedings under or in connection with these Rules, it may refer the matter to a special fact-finding committee or referee specially appointed for that purpose or may authorize the Board of Commissioners or the Committee on Character and Fitness so to serve.
- (i) **Pleadings.** The form, style and content of all pleadings shall conform to the provisions of Rule 10 of the *Idaho Rules of Civil Procedure*.

RULE 220. House Counsel License

- *(a) **Statement of Purpose.** House counsel licenses are intended to permit lawyers licensed in other jurisdictions to practice law in Idaho without the requirement of taking the Bar Examination, provided that their practice is limited as provided hereafter.

*(Section (a) added 3-1-88)

- *(b) **Eligibility.** A person for admission to the practice of law as house counsel in this state must show to the satisfaction of the Board that he or she:

- (1) maintains his or her office for the practice of law as house counsel within the state of Idaho on behalf of his or her corporate employer; and
- (2) is the age of majority; and
- *(3) has received a juris doctorate or bachelor of laws degree, or an equivalent basic law degree from an approved law school as defined in Rule 200(a).

*(Section (3) amended 3-17-03)

- (4) is a person of good moral character; and
- (5) is admitted to the practice of law before the highest court of a state or of the District of Columbia whose requirements therefor are commensurate with the State of Idaho, including passing a qualifying bar examination for such admission; and
- (6) is a full-time employee of a company, association, or corporation as house counsel, which business of his or her employer is not engaged in the selling or furnishing of legal advice or services to other; and
- (7) is not, and has not been, suspended or disbarred in any state in which he or she is admitted; and

- (8) has in full force and effect an exclusive service contract with the company, association, or corporation.

*(Section (b) amended 6-10-98 - effective 7-1-98)

- (c) **Application.** An applicant shall file an application for a house counsel license on a form provided by the Board, which shall include an authorization and release to enable the Board to obtain information concerning such applicant. The applicant must give a full and direct response to the requirements of the application form in the manner and time prescribed by these Rules and the application form.

- (1) **Time for Filing.** The application for a house counsel license must be filed with the Executive Director at least sixty (60) days prior to the applicant's assuming his or her duties as house counsel.

- *(2) **Fee.** No application for a house counsel license shall be accepted by the Executive Director unless such application is accompanied by an application fee of six hundred ninety dollars (\$690.00).

*(Section (2) amended 1/6/97 and amended 5-28-02 – effective 7-1-02)

- (d) **Processing Application.**

- (1) **Action by Board.** Upon receipt of the application, the Board shall make, or cause to be made, an investigation of each applicant's qualifications for licensure as house counsel.

- (A) **Reference of Application for Investigation.** The Board may refer any application for a house counsel license to the Committee on Character and Fitness or to the Bar Counsel for the purpose of investigating and making recommendations on any matter connected with the application.

- (i) **Appearance of Applicant.** An applicant for a house counsel license may be required to appear before the Board, the Committee, or Bar Counsel, upon reasonable notice and submit to an examination touching any matter deemed relevant by the Board, Committee or Counsel to a proper consideration of the pending application.

- (aa) **Failure to Appear.** Failure to appear before the Board, Committee or Counsel as directed shall be sufficient reason for rejection of the application.

- (B) **Recommendations.** Upon such investigation as the Board, in its discretion, deems appropriate, the President of the Board of Commissioners or his or her designee shall endorse thereon his or her approval or disapproval of the application and forward the same to the Supreme Court.

- (2) **Action by Court.** Upon receipt of the application signed by the President of the Board, or his or her designee, the Court shall then issue or refuse to issue a house counsel license and forward its decision to the Idaho State Bar. The applicant shall be notified of the Court's decision.

- (A) **Effective Date.** No license as house counsel shall be effective until approved by order of the Supreme Court.

- (e) **Scope of Practice.** An applicant to whom a house counsel license is issued shall limit his or her professional activities to internal counseling and practice limited to the business of his or her employer. He or she shall not:

- (1) appear before a court or administrative tribunal as an attorney or counselor in the State of Idaho; or
- (2) offer legal services or advice to the public or hold himself or herself out to be so engaged or authorized.

- (f) **Regulations Applicable.** An individual to whom a house counsel license has been issued shall be subject to the Bar Commission Rules governing conduct and discipline of attorneys.

Any violation of this Rule shall constitute grounds for suspension or termination of the house counsel license.

- *(g) Renewal of License.** A house counsel license must be renewed annually in accordance with Rule 302(a) of the Rules relating to maintenance of membership following admission.

**(Section (g) amended 5-17-89)*

- *(h) Subsequent Bar Examination.** Any person who has been issued a house counsel license may sit for any regularly scheduled bar examination by filing a written request for permission to take the examination with the Executive Director within 30 days prior to the examination for which permission to sit is requested, provided that such applicants shall satisfy the Multistate Professional Responsibility Examination requirement as set forth in Rule 203(a)(4).

**(Section (h) amended 5-17-89 and amended 8-31-94 effective 9-1-94)*

- *(i) Cessation of Activity as House Counsel.** A house counsel shall cease immediately performing any services under this Rules and shall cease holding himself or herself out as a house counsel:

- (1) upon termination of the exclusive services contract with the company, association or corporation certified to the Board under Rule 220(b)(8);
- (2) upon termination the maintenance of his or her office in the state of Idaho as provided in Rules 220(b)(1);
- (3) upon failure to meet annual licensing requirements as provided in Rule 302(a);
- (4) upon completion of any disciplinary proceedings which results in the suspension or termination of the house counsel license.

**(Section (i) amended 5-28-02 – effective 7-1-02)*

- (j) Notice of Change in Employment.** Each individual who has been issued a license as house counsel shall notify, in writing, the Executive Director of the termination of the exclusive services contract upon which the house counsel license was issued.

RULE 221. Legal Intern License

- (a) Admission to Limited Practice as Legal Intern.** Notwithstanding any provisions of any other rule to the contrary, qualified law students and recent law school graduates, upon application and approval in accordance with the requirements set forth in this Rule, may be admitted to the status of "legal intern", and may be granted a limited license to engage in the practice of law as hereinafter provided and not otherwise.

- *(b) Qualifications.** The applicant for a legal intern license must:

- (1) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds (2/3) of a prescribed three-year course of study; or
- (2) have graduated from an approved law school as defined in Rule 200(a) within the 12-month period immediately preceding his or her application for a legal intern license; provided, that an applicant who is a member in good standing in the Bar of another jurisdiction does not need to meet the 12-month requirement provided he/she applies to take the Idaho Bar Examination at the next available opportunity, in which case the limited license (if granted) would be in effect until the date of the swearing-in of the Bar examination session; and
- (3) have the written approval of his or her application by his or her law school dean or person designated by such dean.
 - (A) Approval given to a law student by his or her law school dean or his or her designee may be withdrawn at any time by notice, in writing, from the law school dean or his or her designee to the Clerk of the Supreme Court and the Executive Director of the Idaho State Bar.

- (B) Approval given to a law student by his or her law school dean or his or her designee shall be withdrawn if the student:

- (i) ceases to be duly enrolled as a student prior to graduation; or
- (ii) ceases to be in good academic standing.

**(Section (b) amended 3-1-88 and 4-13-94 - effective 7-1-94)*

- (c) Application.** The applicant shall submit an application on a form provided by the Idaho State Bar. Such application shall contain:

- (1) the name, address, telephone number and signature of the supervising attorney;
- (2) the applicant's certification, under oath, that he or she has read, is familiar with, and will abide by, the Idaho Rules of Professional Conduct and disciplinary rules as adopted by the Supreme Court;
- (3) the state or states in which he or she has been granted a limited license as a legal intern prior to applying for such license in this state; whether such limited license has ever been revoked and, if so, the date and reasons for such revocation.

- (d) Application Fee.** A twenty-five dollar (\$25.00) application fee shall accompany the application for a legal intern license to defray the cost of processing such application.

- (e) Processing of Application.**

- (1) **Action by Board.** Upon receipt of the application, the President of the Board of Commissioners of the Idaho State Bar, or his or her designee, shall examine and evaluate the application. Following the examination and evaluation of the application, the President, or his or her designee, shall endorse thereon his or her approval or disapproval and forward the same to the Supreme Court.

- (A) **Effect of Approval.** If it is determined to approve the application for limited license, such approval shall not constitute a finding of good moral character and fitness for the purposes of meeting the qualifications for permission to take the bar examination or for admission to the practice of law generally.

- (2) **Action by Court.** Upon receipt of the application signed by the President of the Board, or his or her designee, the Court shall then issue or refuse to issue a limited license as a legal intern and forward its decision to the Idaho State Bar. The applicant shall be notified of the Court's decision.

- *(f) Scope of Legal Intern Practice.** An applicant to whom a legal intern license is issued shall:

- (1) be authorized to engage in the limited practice of law, in civil and criminal matters, as authorized by this Rule.
- (2) be authorized to participate in proceedings before a court of general jurisdiction, without the presence of the supervising attorney, if:
 - (A) the proceedings are ex parte; or
 - (B) the facts and the resulting order are based upon a stipulation between the parties to the proceeding.
- (3) be authorized to participate in proceedings before a court of limited jurisdiction, without the presence of the supervising attorney if:
 - (A) the proceedings involve misdemeanor proceedings tried without a jury, juvenile proceedings, or ex parte proceedings where the supervising attorney has filed a certificate in such cases with the presiding judge or magistrate, certifying that the intern:
 - (i) has actually participated in not less than three (3) like actions under the direct supervision and control of the supervising attorney;
 - (ii) is fully prepared to present the matter; and
 - (iii) has written permission of the client to appear on behalf of the client.

(B) the supervising attorney, as well as the legal intern, is responsible to the Court, the Idaho State Bar, the Supreme Court and the client for all acts of the legal intern.

- (4) be authorized to participate in any civil and criminal proceedings provided the supervising attorney is present.
- (5) A judge or magistrate may exclude a legal intern from active participation in proceedings before the court in the interest of orderly administration of justice or for the protection of a client or witness, and shall thereupon grant a continuance to secure the attendance of the supervising attorney.

**(Section (f) amended 3-31-00)*

(g) **Duties of Legal Intern.** Each legal intern shall:

- (1) keep the supervising attorney, the Idaho State Bar, and the Supreme Court advised as to his or her current residence at all times.
 - (A) Failure to do so shall be grounds for the immediate termination of his or her license without notice.
- (2) abide by the Idaho Rules of Professional Conduct and disciplinary rules as adopted by the Supreme Court and all other laws and rules governing lawyers admitted to the bar of this state, and shall be personally responsible for all services performed as an intern.
- (3) advise a client, prior to performing any services for such client, of his or her status as legal intern.
- (4) advise the court, prior to appearing before the court, of his or her status as legal intern.

**(h) Supervising Attorney Qualifications.*

- (1) All supervising attorneys shall be members in good standing of the Idaho State Bar and shall have practiced law within the state of Idaho for a period of at least five (5) continuous years prior to the submission of the application.
- (2) For the purpose of supervising legal interns, faculty members at the University of Idaho College of Law shall be exempt from requirements of subsection (1) above and shall be permitted to perform all supervisory responsibilities and may appear in court so long as they meet the following criteria. He or she must:
 - (A) be duly employed as a permanent or visiting faculty member of the University of Idaho College of Law,
 - (B) have been admitted by examination to and be a member in good standing of the bar of another state or the District of Columbia,
 - (C) agree to follow and be subject to the Idaho Rules of Professional Conduct; and
 - (D) have practiced law for a period of at least five continuous years prior to the submission of the application.
- (3) The exemption provided for the University of Idaho College of Law faculty shall apply only to supervision of legal interns and shall not otherwise entitle those persons to engage in the practice of law in this state.
- (4) Without the express approval of the Board of Commissioners, no attorney shall become a supervising attorney if he/she has ever been censured, reprimanded (formally or informally), suspended, or disbarred, or if he or she is, or within the previous twelve (12) months has been, the subject of any grievance received by the Idaho State Bar which has not been resolved in the attorney's favor. If a grievance is filed against an attorney while the attorney is serving as a supervising attorney, and the grievance is resolved against the attorney, the Board of Commissioners may require that the legal intern be advised of the matter or that the attorney withdraw as a supervising attorney.

**(Section (h) rescinded & replaced 3-15-90; amended 3-31-00; and amended 5-28-02 – effective 7-1-02)*

**(i) Duties of the Supervising Attorney.* If the applicant is granted a limited license as a legal intern, the attorney who signs the application for legal intern license as supervising attorney, or another attorney from the same office who qualifies as a supervising attorney pursuant to section (h) of this rule, shall:

- (1) be fully responsible for the acts and conduct of the legal intern while acting within the scope of authority and work assigned to him or her by the supervising attorney;
- (2) maintain direction and supervision over all such work of the legal intern;
- (3) review and sign all pleadings, motions, briefs, and other documents prepared by the legal intern, provided that the documents may also be signed by the legal intern followed by the title "legal intern";
- (4) notify immediately the Idaho State Bar and the Supreme Court that:
 - (A) there has been a change of the intern's place of residence which impairs or prevents the ability of the supervising attorney from performing his or her duties under this Rule, which notice shall state the new address if known, of the legal intern; or
 - (B) the legal intern is no longer employed by the supervising attorney.
- (5) be present in any proceedings which, under this Rule, requires his or her attendance;
- (6) file a certificate as required by subsection (f)(3)(A) in those proceedings where his or her presence is not required;
- (7) continue to be responsible for the acts and conduct of the legal intern as provided in these Rules until expiration or revocation of the limited license of the legal intern;
- (8) advise the court and a client, before any services are performed before the court or on behalf of the client, of the legal intern's status;
- (9) **not** be required to be present in the room while the legal intern is advising or negotiating on behalf of a person referred to him or her by the supervising attorney, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

**(Section (i) amended 12-5-02 and 8-12-03)*

**(j) Number of Interns to be Supervised.* No supervising attorney shall have supervision over more than one (1) legal intern at any one time as herein provided except in the case of a clinical course offered by an accredited law school, approved by its dean and directed by a member of its faculty, and conducted under the auspices of the law school. The clinical supervising professor may have supervision over said clinical course without limit to the number of interns involved.

**(Section (j) amended 3-31-00; and amended 5-28-02 – effective 7-1-02)*

(k) **Compensation for Services.** No legal intern may receive payment from a client for his or her services; however, nothing contained herein shall prevent a legal intern from being paid for his or her services by his or her employer or supervising attorney, or to prevent his or her employer from making such charges for the services of a legal intern as may otherwise be proper.

**(l) Substitution of Supervising Attorney.* A licensed legal intern may apply to substitute another active member of the Bar who meets the qualifications provided in subsection (g) of this Rule as the supervising attorney by application to the Idaho State Bar and Supreme Court, on a form prescribed by the Board. Such application shall provide the information required in subsection (b) of this Rule.

(1) **Application Fee.** A ten dollar (\$10.00) application fee shall accompany the application to substitute another active member of the Bar as the supervising attorney.

(2) **Effective Date.** No such substitution shall be effective until approved by order of the Supreme Court.

**(Section (1) amended 9-19-96)*

- (m) **Termination of Supervising Attorney.** An attorney currently acting as a supervising attorney may be terminated as a supervising attorney at the discretion of the Board of Commissioners.

(1) **Limited Practice Following Termination.** When an intern's supervisor is so terminated, the intern shall cease performing any services under this rule and shall cease holding himself or herself out as a legal intern until written notice of a substitute supervising attorney, signed by the intern and by a new and qualified supervising attorney, is given to, and approved by, the Board of Commissioners and the Supreme Court.

- (n) **Disciplinary Action Against Supervisor.** The failure of a supervising attorney, or an attorney acting as a supervising attorney, to provide adequate supervision or to comply with the duties set forth in this Rule shall be grounds for disciplinary action pursuant to the Rules for Review of Professional Conduct.

(o)* **Term of Limited License. The limited license of a legal intern shall be granted for a definite period of time not to exceed a period of twelve (12) consecutive months. No application shall be effective nor a limited license granted until approved by order of the Supreme Court. In the event any of the conditions upon which the license was issued cease to exist during this twelve-month period, the intern shall immediately notify the court and the license shall be suspended until such time the intern notifies the court that the conditions are again met.

- (1) No person who fails the Idaho bar examination more than two times shall continue to serve or to be eligible to become a legal intern after the date the results of the third bar examination failure are made public.
- (2) No person who fails the Idaho bar examination is eligible to serve as a legal intern unless he or she meets the requirements in section (q)(3) of this Rule.
- (3) No person who fails the Idaho bar examination after issuance of a limited license shall continue to serve as a legal intern until his or her limited license is reinstated pursuant to section (q)(3) of this Rule.
- (4) No person shall serve as a legal intern more than twelve (12) months after graduation from law school, except as provided in section (b)(2) or section (q) of this Rule.

**(Section (o) amended 4-13-94 (effective 7-1-94); 5-28-96 and 8-12-03)*

(p)* **Renewal of Limited License. A limited license of a legal intern may be renewed one (1) time only by application showing good cause to the Board of Commissioners and the Idaho Supreme Court. The application for renewal of the limited license must be filed with the Executive Director upon a form provided by the Board.

- (1) **Renewal Fee.** A twenty-five dollar (\$25.00) fee for renewal of the limited license must accompany the application.
- (2) **Effective Date.** No renewal of a limited license shall be effective until approved by Order of the Supreme Court.

(q)* **Petitions for Reinstatement of License. In the event of any of the following conditions, the applicant must petition to the Supreme Court to have his or her limited license as a legal intern renewed or reinstated as the case may be.

- (1) The applicant has already had his or her limited license as a legal intern renewed once.
- (2) The applicant has previously had his or her limited license as a legal intern revoked pursuant to subsection (r).
- (3) The applicant has failed the Idaho bar examination. Applicants who have failed one or two bar examinations but who wish to continue as a legal intern shall only be permitted to do so if they:
 - (A) apply for the next Idaho bar examination; and

(B) inform the Idaho State Bar of their intention to continue as a legal intern; and

(C) inform their supervising attorney that they have failed the examination and obtain that lawyer's written consent to continue as supervising attorney.

(r)* **Revocation of Limited License. A limited license as a legal intern is granted at the sufferance of the Supreme Court and may be revoked at any time by the Supreme Court upon the Court's own motion, upon motion of the supervising attorney or the Board of Commissioners of the Idaho State Bar, or upon motion of the legal intern and the surrender of his or her limited license. The Supreme Court may rule upon such motion ex parte, without hearing and without notice to any party and with or without stated cause.

(s)* **Cessation of Activity as Legal Intern. An intern shall cease immediately performing any services under this Rule and shall cease holding himself or herself out as a legal intern:

- (1) upon the cessation of any of the conditions upon which the license was issued;
- (2) upon termination for any reason of said intern's limited license under this rule;
- (3) upon the resignation of the intern's supervising attorney;
- (4) upon the suspension or termination by the Board of Commissioners of the Idaho State Bar of the supervising attorney's status as a supervising attorney; or
- (5) upon the withdrawal of approval of the intern pursuant to this Rule.

(t)* **Termination of Rule for Intern Limited License. The effectiveness of this Rule for intern limited license shall be terminated when ordered by the Supreme Court of the State of Idaho.

**(Sections (o)-(t) amended 6-15-01 – Effective 7-1-01)*

***RULE 222. Limited Admission/Pro Hac Vice**

**(a)* Except as otherwise provided in these Rules, only an active member of the Idaho State Bar may enter appearances for a party, sign stipulations or receive payment or enter satisfaction of judgment, decree, or order.

**(b)* Any active member in good standing of the bar of the highest court of any State or any Territory or Insular possession of the United States, who has been retained to appear in the courts of this state, who is not a member of the Idaho State Bar or a resident of the State of Idaho, and who currently maintains an ongoing law practice with offices located in another jurisdiction, may be permitted, after motion to the affected court and without previous notice, to appear and participate in a particular case, subject to any limitations imposed by any jurisdiction of which the applicant is a member of the bar, and subject to the limitations set forth below.

**(Sections (a), & (b) amended 3-1-88)*

**(c)* An applicant for limited admission shall designate, in his or her motion to so appear, an active member of the Idaho State Bar with whom the court and opposing counsel may readily communicate regarding the conduct of the case. He or she shall also include with such motion the address, telephone number and written consent of such designee and shall include reference to the Bar of which he/she is a member.

**(Section (c) amended 3-1-88; and amended 5-28-02 – effective 7-1-02)*

(d) Since permission to appear is limited, no certificate of admission shall be issued by the court.

(e) The lawyer designated as local counsel shall personally appear with the limited admittee on all matters tried and heard before the court, unless the trial judge specifically excuses local counsel from attendance.

(f) By his or her application, an attorney who applies for limited admission consents to the exercise of disciplinary jurisdiction by the court and the Idaho State Bar over any alleged misconduct which occurs during the progress of the case in which the attorney so admitted participates.

*(g) Any attorney seeking or granted limited admission shall state, upon any court filing on which the attorney's name appears, his or her current office address in the jurisdiction where the attorney is an active member.

*(h) "Active member" means any person who is not a judge and who is licensed to practice law before the highest court of any State, or any Territory or Insular possession or the United States, and who is engaged in the active practice of law in that jurisdiction.

*(Sections (g) & (h) added 3-1-88)

*(i) The Idaho State Bar shall maintain a record of all limited admission applications as a public record, and shall promptly provide such record, upon request, to any judge seeking to know whether the applicant has previously sought limited admission.

*(j) Each application for limited admission shall be by written motion. The original shall be filed with the trial court, with copies to be served on all parties to the action. A copy of the motion shall be submitted to the Idaho State Bar, accompanied by a \$200 fee in each case. Local counsel shall be jointly responsible for payment of the fee.

*(k) This rule does not quantify the number of limited admissions that may be granted to an individual, except for any lawyer applying by virtue of active membership in a jurisdiction that limits the number of limited admissions of Idaho lawyers. For those lawyers, there shall be a reciprocal limitation on the number of admissions.

*(l) The application shall be in substantially the following form:

Local Counsel
Office Address
Business Phone
Bar Number
Applying Counsel
Out of State Office Address
Business Phone
IN THE _____ COURT OF THE STATE OF IDAHO
)
Case Caption) Case # _____
)
) Motion for Limited Admission
_____))
* * *

The undersigned *local counsel* petitions the court for admission of the undersigned *applying counsel*, pursuant to Idaho Bar Commission Rule 222, for the purpose of the above-captioned matter.

Applying counsel certifies that he/she is an active member, in good standing, of the bar of _____, that he/she maintains the regular practice of law at the above-noted address, and that he/she is not a resident of the State of Idaho or licensed to practice in Idaho. *Applying counsel* certifies that he/she has previously been admitted under IBCR 222 in the following matters:

[If *applying counsel* has been denied admission under this rule in this or any jurisdiction, a separate affidavit explaining the circumstances of such denial shall accompany this motion].

Both undersigned counsel certify that a copy of this motion has been served on all other parties to this matter and that a

copy of the motion, accompanied by a \$200 fee, has been provided to the Idaho State Bar.

Local counsel certifies that the above information is true to the best of his/her knowledge, after reasonable investigation. *Local counsel* acknowledges that his/her attendance shall be required at all court proceedings in which *applying counsel* appears, unless specifically excused by the trial judge.

DATED this _____ day of _____, _____

/s/ _____ /s/ _____

Applying Counsel

Local Counsel

*(Rule 222 amended and Sections (i)-(l) added 3-31-00 – Effective 10-1-00)

*RULE 223. Emeritus License

(a) **Purpose.** To provide a licensing status to allow attorneys retired from the active practice of law, or who are or were admitted to practice law before the highest court of Idaho or any other state, territory of the United States or the District of Columbia, to provide pro bono legal services to the indigent through recognized pro bono, legal aid, or legal assistance programs.

(b) **Definitions.**

(1) **Active Practice of Law**, for the purposes of this Rule, means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment, or academic employment.

(2) **Emeritus Attorney** is any affiliate member of the Idaho State Bar or an attorney who is or was admitted to practice law before any other state or territory of the United States or the District of Columbia; and

(A) Has been engaged in the active practice of law for a minimum of ten out of the fifteen years immediately preceding the application to participate in the emeritus program; and

(B) Has been a member in good standing of the Idaho State Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction with the past fifteen years; and

(C) If not an affiliate member of the Idaho State Bar, has

(i) graduated from a law school accredited by the American Bar Association and has not failed the Idaho Bar examination three or more times; and

(ii) paid a license fee to the Idaho State Bar to become an affiliate member for the purposes of this rule (without having to take the Idaho Bar examination); and

(D) Agrees to abide by the Idaho Rules of Professional Conduct and to submit to the jurisdiction of the Idaho Supreme Court and the Idaho State Bar for disciplinary purposes; and

(E) Neither asks for nor receives any compensation of any kind for the legal service to be rendered hereunder; and

(F) Is certified under Section (e) hereof.

(3) **Approved Legal Assistance Organization**, for the purposes of this Rule, is a not-for-profit legal assistance organization which is approved by the Idaho Supreme Court as set forth herein. A legal assistance organization seeking approval from the Idaho Supreme Court for the purposes of this article shall file a petition with the Clerk of the Idaho Supreme Court certifying that it is a not-for-profit organization and reciting with specificity:

- (A) The structure of the organization and whether it accepts funds from its clients;
 - (B) The major source of funds used by the organization;
 - (C) The criteria used to determine potential clients' eligibility for legal service performed by the organization;
 - (D) The types of legal and nonlegal service performed by the organization;
 - (E) The names of all members of the Idaho State Bar who are employed by the organization or who regularly perform legal work for the organization; and
 - (F) The existence and extent of malpractice insurance which will cover the emeritus attorney.
- (4) **Supervising Attorney**, for purposes of this Rule, is an active member of the Idaho State Bar who directs and supervises an emeritus attorney engaged in activities permitted by this Rule. The supervising attorney must:
- (A) Be employed or be a participating volunteer for an approved legal assistance organization; and
 - (B) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding, or other legal service in which the emeritus attorney participates; and
 - (C) Assist the emeritus attorney in his or her preparation to the extent that the supervising attorney considers it necessary.
- (c) **Activities**
- (1) An emeritus attorney, in association with an approved legal assistance organization and under the supervision of a supervising attorney, may perform the following activities:
 - (A) The emeritus attorney may appear in any court or before an administrative tribunal or arbitrator in this state on behalf of a client or an approved legal assistance organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of the judge of the court, the presiding officer of the administrative tribunal, or the arbitrator.
 - (B) The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleading also shall be signed by the supervising attorney.
 - (C) The emeritus attorney may render legal advice and perform other appropriate legal services, but only after prior consultation with and upon the express consent of, the supervising lawyer.
 - (D) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.
 - (2) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the emeritus attorney's participation in any proceeding.
- (d) **Supervision and Limitations**
- (1) An emeritus attorney must perform all activities authorized by this Rule under the direct supervision of a supervising attorney.
 - (2) Emeritus attorneys permitted to perform services under this Article are not, and shall not represent themselves to be, active members of the Idaho State Bar licensed to practice law in the state of Idaho.
 - (3) The prohibition against compensation for the emeritus attorney contained in Section (b)(2)(F) shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering service hereunder, nor shall it prevent approved legal assistance organization from making such charges for its service as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court awarded attorneys' fees for any representation rendered by the emeritus attorney.
- (e) **Certification.** Permission for an emeritus attorney to perform services under this Rule shall become effective upon filing with and approval by the Clerk of the Idaho Supreme Court of:
- (1) A certification by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder;
 - (2) A certificate from the highest court or agency in the state, territory, or district in with the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by Section (b)(2)(B) hereof; and
 - (3) A sworn statement by the emeritus attorney that he or she:
 - (A) Has read and is familiar with the Idaho Rules of Professional Conduct as adopted by the Idaho Supreme Court and will abide by the provisions thereof; and
 - (B) Submits to the jurisdiction of the Idaho Supreme Court and Idaho State Bar for disciplinary purposes; and
 - (C) Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder.
- (f) **Withdrawal of Certification**
- (1) Permission to perform services under this article shall cease immediately upon the filing with the Clerk of the Idaho Supreme Court of a notice either:
 - (A) By the approved legal assistance organization stating that:
 - (i) The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or
 - (ii) That the certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the case for such withdrawal. A copy of the notice filed with the Clerk of the Idaho Supreme Court shall be mailed by the organization to the emeritus attorney concerned.
 - (B) By the Idaho Supreme Court, in its discretion, at any time, stating that permission to perform service under this article may be revoked. A copy of such notice shall be mailed by the Clerk of the Idaho Supreme Court to the emeritus attorney involved and to the approved legal assistance organization to which he or she has been certified.
 - (2) If an emeritus attorney's certification is withdrawn, for any reason, the supervising attorney shall immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.
- (g) **Discipline.** In addition to any appropriate proceeding and discipline which may be imposed by the Idaho Supreme Court or the Idaho State Bar, the emeritus attorney shall be subject to the following disciplinary measures:
- (1) The presiding judge or hearing officer for any matter in which the emeritus attorney has participated may hold the

emeritus attorney in civil contempt for any failure to abide by such tribunal's orders; and

- (2) The Idaho Supreme Court or the approved legal assistance organization may, at any time, with or without cause, withdraw certification hereunder.

**(Rule 223 added 1-1-90)*

SECTION III

Right To Practice After Admission

RULE 301. Definitions. As used in the Rules relative to right to practice after admission, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) **Active Member.** "Active Member" means any person who is not a judge and who is licensed to practice law in the State of Idaho and is engaged in the active practice of law in this state.
- (b) **Affiliate.** "Affiliate" means any person who has been admitted to the Bar of the State of Idaho but is not engaged in the active practice of law within the State of Idaho and who has no voting rights in matters concerning the regulation of the practice of law in this state.
- (c) **Bar Counsel.** "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.
- (d) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.
- (e) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- (f) **Director or Executive Director.** "Director" or "Executive Director" means the chief administrative officer of the Idaho State Bar.
- *(g) **Emeritus.** "Emeritus" means a nonvoting member of the Idaho State Bar licensed under terms and conditions of IBCR 223 with a limited license to represent clients on a pro bono basis under the supervision of an approved legal assistance organization.

*(Section (g) added 3-15-90)

- *(h) **House Counsel.** "House Counsel" means a person who has been admitted, without examination, to engage in the limited practice of law as an employee, under an exclusive services contract, of a company, association or corporation which does not provide legal services to the public, pursuant to Rule 220.

*(Section (h) amended 3-1-88)

- (i) **Inactive Member.** "Inactive Member" means a member of the Idaho State Bar who has failed to meet the requirement for licensure for the current year and cannot engage in the practice of law in this state.
- *(j) **Resident.** "Resident" means:
 - (1) A citizen of the United States and the state of Idaho; or
 - (2) An alien lawfully admitted to the United States for permanent residence who lives in Idaho; or
 - (3) An individual who is a resident of the state of Idaho at the time of induction into the military service, unless during that period such applicant has affirmatively evidenced an intention to give up Idaho residence.

*(Section (j) amended 3-1-88)

- (k) **Rules or These Rules.** "Rules" or "These Rules" means Rules 301 through 307 of the Bar Commission Rules.
- (l) **State.** "State" means the State of Idaho.

***RULE 302. Right to Practice After Admission; Maintenance of Membership.** Following admission as a member of the Idaho State Bar, an attorney may maintain membership in the Bar as follows:

- *(a) **Active Member.** The right to engage in the active practice of law in the State of Idaho, after admission, shall be dependent upon:

*(1) Payment of the annual license fee required by Rule 303; and

*(Section (1) amended 6-10-98 - effective 7-1-98)

- (2) Establishment of a trust account in a financial institution in the state of Idaho for the safekeeping of the monies and properties of the member's Idaho clientele.

(A) All trust accounts maintained by members of the Idaho State Bar shall be clearly identified as such

- (i) Lawyers who practice in Idaho shall deposit all funds held in trust in this jurisdiction in accordance with Rule 1.15(a) of the Idaho Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts", and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts.

- (ii) Funds held in trust include funds held in any fiduciary capacity, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Idaho Supreme Court or the Idaho State Bar.

(B) As a condition of licensing, all active members shall be required to consent to disclosure of trust account overdrafts.

- (i) Because the consent of depositors is required to permit financial institutions to comply with this Rule, every lawyer practicing or admitted to practice in Idaho shall, as a condition thereof, be required to consent to the reporting and production requirements mandated by this Rule.

- (ii) Consent shall be acknowledged as part of every lawyer's annual licensing form.

- (iii) Lawyers practicing in Idaho by virtue of Rule 221, Rule 222, or under any other authority which does not require completion of the annual licensing form shall be deemed to have given their implied consent to the requirements of this rule as condition of their right to practice in Idaho.

(C) Financial institutions acting as depositories for trust accounts shall be required to consent to provide notification.

- (i) A financial institution shall be approved as a depository of attorney trust accounts if it shall file with the Idaho State Bar an agreement, in a form provided by the Bar, to report to Bar Counsel in the event any properly payable instrument is presented against an attorney trust account containing funds insufficient to honor the instrument in full, irrespective of whether or not the instrument is honored.

- (ii) The Supreme Court shall establish rules governing approval and termination approved status for financial institutions, and the Bar shall annually publish a list of approved financial institutions.

- (iii) No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon [30] days notice in writing to the Idaho State Bar.

(D) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor.
- (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.
- (iii) Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within [5] banking days of the date of presentation for payment against insufficient funds.

(E) Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

(F) Any disclosure made pursuant to this Rule shall be subject to the confidentiality requirements of Rule 521.

*(G) As used in the above subsections, the following definitions apply:

- (i) "Financial institution" - includes any bank, savings and loans association, credit union, savings bank or other entity, located within the state of Idaho, which accepts for deposit funds in accounts in which the principal is not at risk. Money deposited in such accounts must be fully insured by federal depositor insurance, including but not limited to FDIC, FSLIC, NCUA, or SIPC.
- (ii) "Properly payable" - refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under laws of Idaho.
- (iii) "Notice of dishonor" - refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

*(Section (G) amended 3-31-00)

- (3) Provision of a certificate of maintenance of trust account as required by the Idaho Rules of Professional Conduct; and
- (4) Compliance with the requirements of Rule 402 or Rule 410 relating to continuing legal education; and
- (5) Active members who are not residents of the State of Idaho shall be required to file with the Office of Bar Counsel of the Idaho State Bar the name and address of an agent within this state for the purpose of receiving service of process or any other document intended for the lawyer as a party, arising from the lawyer's practice of law. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer. Nothing in this section is intended to conflict with service of process provisions set forth in the *Idaho Rules of Civil Procedure*; and

*(6) Completion of the practical skills seminar, as set forth by Rule 402(f).

*(Section (6) added as then Section (8) 2-13-92 - Effective 7-1-92.

*(7) **Disclosure of Professional Liability Insurance.** Each lawyer admitted to the active practice of law shall certify to the Idaho State Bar on or before February 1 of each year (1) whether the lawyer represents private clients; (2) if the lawyer represents private clients, whether the lawyer is currently covered by professional liability insurance; and (3)

whether the lawyer intends to maintain insurance during the next twelve months. Each lawyer admitted to the active practice of law in this jurisdiction who reports being covered by professional liability insurance shall identify the primary carrier and shall notify the Idaho State Bar in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

*(Section (7) added 6-5-06 - Effective 10-1-06)

*(Section (a) amended 2-7-97 - Effective 7-1-97.)

*(b) **Affiliate Member.** A member of the Idaho State Bar who indicates he or she will not meet the requirements for active membership during the current licensing year may maintain an affiliate membership by payment of the annual membership fee as required by Rule 303.

*(Section (b) amended 6-10-98 - effective 7-1-98)

(c) **House Counsel.** A person to whom a house counsel license has been issued may maintain such license by meeting the requirements established by Subsection (a) of this Rule.

*(d) **Emeritus Member.** A person who meets the requirements of IBCR 223 may maintain an emeritus membership by payment of the annual membership fee as required by Rule 303.

*(Section (d) 6-10-98 - effective 7-1-98)

(e) **Inactive Member.** Any member of the Idaho State Bar who advises the Idaho State Bar, in writing, that he or she does not intend to meet the licensing requirements for the current licensing year, or who fails to meet the licensing requirements for the current licensing year shall be considered an inactive member of the Bar.

*(Rule 302 rescinded and replaced 3-15-90)

***RULE 303. Annual License Fees.** Maintenance of membership in the Idaho State Bar shall require the payment of a non refundable annual license fee payable on or before February 1 of the year 2003, and on or before February 1 of each year thereafter, as prescribed below.

(a) **Active Member and House Counsel**

(1) In the calendar year of admission:

- (A) One hundred forty dollars (\$140.00) if admitted prior to July 1 of the calendar year.
- (B) Ninety dollars (\$90.00) if admitted after July 1 of the calendar year; or

(2) Two hundred fifty five dollars (\$255.00) in the first, second and third full calendar years of admission.

(3) Three hundred forty dollars (\$340.00) in the fourth full calendar year of admission and each and every year thereafter until the calendar year following the lawyer's seventy-second birthday and for such calendar year and each year thereafter, the sum of fifty five dollars (\$55.00).

(b) **Affiliate/Emeritus Members**

(1) One hundred twenty dollars (\$120.00) in each year affiliate or emeritus membership is maintained until the calendar year following the lawyer's seventy-second birthday and for such calendar year and each year thereafter, the sum of fifty five dollars (\$55.00).

(c) **Penalties for Failure to Pay Annual License Fees by Deadline Date.**

(1) Active and House Counsel members who fail to pay the full amount of the annual license fees by the deadline as required above shall pay an additional fee of fifty dollars (\$50.00).

(2) Affiliate and Emeritus members who fail to pay the full amount of the annual license fees by the deadline as required above shall pay an additional fee of twenty-five dollars (\$25.00).

**(Rule 303.1 added 3-22-02 – effective 7-1-02, Rule 303 deleted and Rule 303.1 renumbered as Rule 303 on 3-17-05)*

RULE 304. Failure to Comply with Licensing Requirements

(a) No license to practice law for the next calendar year shall be issued to any member who timely fails to:

**(1) Pay the annual license or membership fee including any applicable fees for late payment pursuant to IBCR 303(c); or*

**(Section (1) amended 6-10-98 - effective 7-1-98)*

(2) File a proper certification of maintenance of trust account; or

(3) File a proper certification of compliance with continuing legal education requirements.

**(4) File a proper certification pursuant to IBCR 302(a)(7) Disclosure of Professional Liability Insurance.*

**(Section (4) added 6-5-06 – Effective 10-1-06)*

*(b) **Notice.** The Executive Director shall give, or cause to be given, written notice to each lawyer who fails to pay his or her license fee, fails to file a proper certification of trust account, fails to file a proper certification of compliance with continuing legal education requirements, or fails to file a proper certification of compliance with IBCR 302(a)(7) Disclosure of Professional Liability Insurance. Such notice shall advise the lawyer:

(1) That he or she has until March 1 to complete the requirements of licensure; and

(2) That if he or she fails to complete the requirements by March 1, he or she shall be transferred to inactive status and the Supreme Court will be notified to remove his or her name from the list of lawyers entitled to engage in the practice of law in this state.

**(Section (b) amended 6-10-98 - effective 7-1-98 and 6-5-06 – Effective 10-1-06)*

*(c) **Reinstatement.** Any lawyer who seeks to return to active status following transfer to inactive status must:

(1) **Failure to Pay License Fee**

(A) Pay to the Executive Director all annual license fees not previously paid at the rate of an affiliate member; and

(B) Pay to the Executive Director the appropriate late fee on all amounts past due.

(2) **Failure to File Trust Account Certification**

(A) File with the Executive Director a proper certification of trust account as required by the Code of Professional Responsibility.

(3) **Failure to File Certificate of Compliance with Continuing Legal Education Requirements**

(A) File with the Executive Director a proper certificate of compliance with the continuing legal education requirements as provided in Rule 402.

**(4) Failure to File a Proper Certification of Compliance with IBCR 302(a)(7) Disclosure of Professional Liability Insurance*

(A) File with the Executive Director a proper certification of compliance with IBCR 302 (a)(7) Disclosure of Professional Liability Insurance.

**(Section (4) added 6-5-06 – Effective 10/1/06)*

(5) If the attorney has been inactive or affiliate for a continuous period of twelve (12) months, he or she shall be required to provide proof in such form as the Board may require that he or she:

(A) Has not been subject to any formal or informal disciplinary proceeding;

(B) Has not been disbarred or suspended from the practice of law in any state in which he or she has at any time been admitted to practice; and

(C) Has not been convicted of a felony or a crime involving moral turpitude.

(6) If the attorney has been inactive or affiliate for a continuous three-year period, the Board shall require proof that he or she remains competent to practice law in the state of Idaho before granting reinstatement. Proof of competence to practice law may include applying for and taking the Idaho bar examination.

(7) The Board may withhold a transfer to active status until it receives a satisfactory showing on any matter raised under subsections (5) and (6) above.

**(Section (7) amended 6-5-06 – Effective 10-1-06)*

**(Section (c) amended 3-1-88; amended 6-15-01 – Effective 7-1-01; and amended 5-28-02 – effective 7-1-02. Sections (4)-(6) renumbered 6-5-06 – Effective 10-1-06)*

***RULE 305. Transfer from Inactive/Affiliate/ Emeritus Status to Active Status**

*(a) A lawyer who has been on inactive status as provided by Rule 302(e) who has maintained affiliate status pursuant to Rule 302(b), or who has maintained emeritus status as provided by Rule 223, must, to return to active membership in the Bar, meet one of the following conditions.

(1) complete no fewer than ten (10) hours of continuing legal education activity within sixty (60) days after notifying the Executive Director of his or her return to active status, or

(2) provide satisfactory evidence that he/she has obtained thirty (30) hours of continuing legal education activity in the thirty six (36) months preceding the date of notifying the Executive Director of his or her return to active status, including the number of ethics or professional responsibility credits required by Rule 402(a).

**(Section (a) amended 8-31-94 effective 9-1-94 and amended 3-17-03, 8-12-03 and 3-17-05)*

(b) Thereafter, the lawyer must comply with the continuing legal education requirements set forth in Rule 402.

(1) The lawyer shall file, with the Executive Director, a report in compliance with Rule 402(c) showing that he or she has completed the requirements set forth in Rule 402(c).

(2) Failure to comply with the requirements of Rule 402(c) shall subject the lawyer to the sanctions provided in Rule 406.

(3) After completing the requirements of this section, a member who has transferred from inactive or affiliate status to active status shall begin a new reporting cycle, making his/her reporting year the third full year following the point of return to active status.

(4) Members returning to active status after service as a judge shall not be required to complete ten (10) hours of continuing legal education upon returning to active status.

**(Rule 305 added 3-15-90 (formerly Rule 409) and amended 6-7-90)*

RULE 306. Change of Name, Address or Telephone Number

(a) **Notification of Changes.** After admission to the practice of law in the state of Idaho, each attorney shall notify the Executive Director, in writing, of any change in his or her name, business or residence address, and business or residence telephone number. Notice of such changes shall be provided no later than thirty (30) days following said changes.

(b) **Failure to Notify of Changes.** Any attorney who fails to maintain current name, address and telephone numbers with the Idaho State Bar may be transferred to inactive membership. An

attorney transferred to inactive status shall not engage in the active practice of law in the state.

- (c) Upon determining that an attorney has not provided the necessary name, address or telephone changes as provided in subsection (a) of this Rule, the Executive Director shall give written notice to the attorney that his or her name has been certified to the Court for transfer to inactive status. Notice to the last known address of the attorney shall be deemed notice upon the attorney.

***RULE 307. Partial Refund of License Fees/Political Activity**

- (a) To the extent ISB license funds are employed to espouse a position on a bill pending before the Idaho Legislature or other deliberative body, a dues-paying member may, upon application, be refunded an appropriate amount of his or her license fee, equal to the proportionate amount expended in espousing the position.
- (b) The amounts of license fees expended on each bill on which the ISB has taken a position shall be announced by publication in *The Advocate* as soon as practicable after the close of the Idaho Legislative session, with the position taken, if any, by the ISB.
- (c) Refund applications shall be made within 30 days of the date of publication of the notice, shall be directed to the Executive Director of the ISB, and shall refer to the bill or resolution by number.
- (d) Nothing in this section shall be construed so as to create an affirmative obligation on the Bar to espouse legislative positions or to refrain from such espousal.

*(Rule 307 added 1-5-87)

SECTION IV

Mandatory Continuing Legal Education

RULE 400. Statement of Purpose. It is of primary importance to the public and to the members of the Bar that attorneys continue their legal education throughout the period of their active practice of law. These rules establish the minimum continuing legal education requirements required for attorneys to maintain a license to engage in the practice of law in the State of Idaho.

RULE 401. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications:

- (a) **Accredited Activity.** "Accredited activity" means a course, video, motion picture, sound tape recording, or other activity approved by the Board of Commissioners, or its designee, for continuing legal education credit.
- (b) **Bar Counsel.** "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.
- (c) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.
- (d) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- (e) **Credit Hour.** "Credit hour" means sixty (60) minutes of actual attendance at an accredited activity.
- (f) **Director or Executive Director.** "Director" or "Executive Director" means the chief administrative officer of the Idaho State Bar.
- (g) **Participant.** "Participant" means an Idaho lawyer, subject to these Rules, who attends or otherwise engages in an accredited continuing legal education activity.
- (h) **Petitioner.** "Petitioner" means a lawyer or organization seeking review of a decision of the Board, or its designee, denying accreditation to a particular continuing legal education activity.
- (i) **Rules or These Rules.** "Rules" or "These Rules" means Rules 400 through 410 of the Bar Commission Rules.
- (j) **State.** "State" means the State of Idaho.

***RULE 402. Education Requirement - Report.**

Except as provided in Rule 410 for lawyers licensed and practicing principally in Oregon, Utah or Washington, all active lawyers shall complete and report continuing legal education credits as provided in the following subsections.

**(Rule 402 amended 2-7-97 - Effective 7-1-97)*

***(a) Minimum Requirement; Ethics Requirement; Specialists**

- (1) Each active member of the Idaho State Bar shall complete a minimum of thirty (30) credit hours of accredited continuing legal education activity in each and every three (3) year period following the date of his or her admission to the practice of law in this state.
- (2) Beginning with those lawyers scheduled to report on December 31, 1993, and thereafter, at least two (2) credit hours of continuing legal education shall be in courses on legal ethics or professional responsibility approved by the Board of Commissioners or its designee.
- (3) Lawyers holding themselves out as specialists or certified specialists, as provided in Section X of these Rules, shall complete a minimum of thirty (30) approved credit hours of continuing legal education activity in each specialty field during the reporting periods described above.
- (4) Fulfillment of the credit requirements set forth in subsections (2) and (3) above may be concurrent with the requirements of subsection (1), and/or with each other.

**(Section (a) amended 4-1-91, and 4-14-93 - Effective 1-1-94)*

- (b) **Attendance Period.** The attendance period shall be based upon the calendar year; provided, however, that attorneys admitted after January 1, 1984 may, during the calendar year of their admission, earn continuing legal education credits which shall apply only to the first period for which a report shall be filed as provided in subsection (c) of this Rule.

- (c) **Report.** Each attorney subject to these Rules shall file a written report, on a form prescribed by the Board, as provided in this Rule.

- (1) **Content of Report.** The report shall set forth the record of the attorney's compliance with these Rules during the attendance period and shall contain at least:

- (A) A list of the courses attended;
- (B) The dates of attendance;
- (C) The sponsoring organization;
- (D) The hours attended, rounded to the nearest tenth of an hour; and,
- (E) The attorney's signature, under penalty of perjury.

- (2) **Place of Filing.** The report of compliance with the continuing legal education requirement shall be filed with the Executive Director of the Idaho State Bar.

- *(3) Time of Filing.* The report shall be filed on, or prior to, February 1 in the year immediately following the calendar year within which the attorney is required to complete the continuing education requirement.

**(Section (3) amended 6-10-98 - effective 7-1-98)*

- *(d) Verification of Compliance.* The Executive Director shall cause up to ten percent (10%) of the reports of compliance filed with his or her office to be randomly reviewed for determination of compliance.

**(Section (d) amended 3-1-88)*

- (e) **Exemptions.** Exemptions from the mandatory continuing legal education, but not the reporting, requirements may be granted as follows:

- (1) **Eligibility.** An exemption may be granted to:

- (A) an active member for a period of not more than one (1) year upon a finding by the Executive Director of special circumstances unique to that member constituting undue hardship.
- (B) An active member over the age of seventy-two (72) upon a finding by the Executive Director of good faith reasons why such member is unable to comply with these Rules.

- (2) **Request for Exemption.** An exemption from the continuing legal education requirements may be sought by filing a written request, setting forth the reasons for the requests, to the Executive Director.

- (3) **Time for Filing.** A request for exemption from the continuing legal education requirements must be filed with the Executive Director at least sixty (60) days prior to the end of the three-year reporting period established by Rule 402(a).

- *(f) Practical Skills Seminar.* Within twelve months of admission to the Idaho State Bar, each lawyer is required to complete a practical skills seminar approved for that purpose by the Idaho State Bar.

- (1) **Deferral.** A lawyer may seek to extend the time period set forth for completion of the practical skills seminar by filing a written petition with the Executive Director within the one-year period, seeking a deferral. The Executive Director

may grant the deferral upon a showing that completion of the practical skills seminar would cause a substantial hardship on the petitioner.

- (2) **Noncompliance.** Failure to comply with the requirements of these subsections shall subject a lawyer to the provisions of Rule 406.
- (3) **Exemption.** Lawyers who have been continuously admitted to practice before the highest court of another state or the District of Columbia for five years at the time of their admission in Idaho shall be exempt from the requirements of this subsection.
 - (A) Lawyers admitted pursuant to IBCR 204A and who have been continuously admitted to practice before the highest court of another state or the District of Columbia for five years at the time of their admission in Idaho are required to complete the continuing legal education requirements set out in IBCR 204A(e).
- (4) **Effective Date.** Only lawyers admitted after the effective date of this rule shall be required to comply with the provisions of this subsection.

**(Section (f) added 2-13-92 - Effective 1-1-93. Amended 8-12-03, 9-15-05 – Effective 10-1-05 and 6-5-06)*

RULE 403. Accreditation

- (a) **Standards.** The Board shall approve continuing legal education activities consistent with the following standards:

- (1) The activity shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as a lawyer and his or her ability to deliver quality legal services in an efficient, competent and ethical manner.
- (2) The activity shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility or ethical obligations of attorneys.
- (3) Activities in which materials are utilized are to be prepared, and the activity conducted, by an individual or group qualified by practical or academic experience in the subject or subjects to be covered.

- * (4) The activity shall be conducted in a setting physically suited to the educational activity. Video, motion picture, sound tape, computer programs or presentations, and correspondence courses may be used.
- (5) Materials utilized in the activity shall be thorough, of high quality, readable, and carefully prepared. The materials should be distributed to all participants at or before the time the activity is offered.

**(Sections (4) & (6) amended 2-7-97 - Retroactive to 1-1-97)*

- * (7) Credits for self-study programs applicable to the requirements for mandatory continuing legal education shall be limited to 15 during every three year reporting period.

**(Section (7) added 2-7-97 - Retroactive to 1-1-97)*

***(b) Presumptive Accreditation**

- (1) **Application for Presumptive Accreditation.** Any sponsor of a continuing legal education activity may apply for presumptive accreditation by filing a written application with the Executive Director on a form provided by the Board.

- (A) **Contents of Application.** The application must contain the following information:

- (i) Background regarding the legal status of the applicant (i.e., a corporation, partnership, cooperative venture, etc.);

- (ii) Whether or not the applicant is a nonprofit organization, or one engaged in the business of providing continuing legal education for profit;
- (iii) The number of persons involved in the sponsorship of continuing legal education programs on behalf of the proposed sponsor;
- (iv) Information with respect to the number of courses it offers, the places, and subject matter;
- (v) An estimate with respect to the percentage of courses it sponsors which relate to continuing legal education as compared to courses which do not relate to continuing legal education;
- (vi) A description of the experience and qualifications of each person involved in the sponsorship, lecturing, teaching or moderating of the programs;
- (vii) A statement whether or not the applicant has ever applied for, received, or been denied presumptive accreditation in another state requiring mandatory continuing legal education;
- (viii) The approximate number of courses offered by the applicant in the preceding three (3) years, including places the courses have been offered, the subject matter, the number of credit hours given, the number of persons attending, total number of hours of instruction, and the names of the speakers, instructors, lecturers or moderators; and
- (ix) A statement of willingness by the applicant to comply with the board requirements for verification of attendance.

- (2) **Fees.** No application for presumptive approval shall be accepted by the Executive Director unless a fee of One Hundred Fifty Dollars (\$150.00) accompanies the written application.

- (3) **Sponsors with Presumptive Accreditation.** The activities provided by the following organizations (and by such others as may be so designated by act of the Board of Commissioners) are presumptively accredited, unless the Board determines otherwise, and no request for accreditation of an activity offered by these organizations is required by the organization or an attorney attending such activities:

- (A) Idaho Law Foundation.
- (B) Idaho State Bar, district bar associations, and local bar associations as certified by the district bar associations of the Idaho State Bar.
- (C) Idaho Trial Lawyers' Association.
- (D) Idaho Supreme Court.
- (E) Law school fully accredited by the American Bar Association.
- (F) American Bar Association approved conference on continuing legal education.
- (G) Association of Trial Lawyers of America.
- (H) U. S. Department of Justice--Attorney General's Advocacy Institute.
- (I) Federal Publications.
- (J) Law Journal Seminars Press (New York Law Journal).
- (K) Practicing Law Institute.
- (L) Defense Research Institute.
- (M) National College of Criminal Defense Lawyers and Public Defenders.
- (N) National Association of District Attorneys.
- (O) State Bar Associations requiring mandatory continuing legal education.
- (P) Judge Advocate General Offices of the several armed services.
- (Q) American College of Trial Lawyers.
- (R) American College of Real Estate Lawyers.

- (S) National Legal Aid and Defenders Association.
- (T) Patent Resources Group, Inc.
- (U) National Association of Attorneys General.
- (V) Professional Education Systems, Inc.
- (W) National Association of Railroad Trial Counsel.
- (X) National Institute for Trial Advocacy
- (Y) Legal Education Institute, Inc.

- (4) **Reporting Requirement.** Presumptively accredited sponsors are still required to submit an attendance report, as required by Rule 403(c)(3).

**(Section (b) amended 3-1-88 and 3-15-90)*

**(c) Prior Accreditation - Subsequent Accreditation.* A person or organization may apply for accreditation of a continuing legal education activity, which is not presumptively approved under Rule 403(b), prior or subsequent to participation in or administration of the activity by filing a written application on a form prescribed by the Board with the Executive Director.

- (1) **Contents of Application.** The written application shall contain:
- (A) The name of the sponsoring organization;
 - (B) A description of the activity;
 - (C) The names and qualifications of each faculty member presenting the activity;
 - (D) The time schedule of the activity;
 - (E) The name of the person or organization requesting accreditation; and
 - (F) The dates and places the activity is being offered.
- (2) **Time of Filing.** The application must be filed no later than:
- (A) twenty-eight (28) days prior to the administration of the activity.
 - (B) fourteen (14) days subsequent to participation in the activity.
- (3) **Reporting of Attendance.** Upon completion of an accredited activity, the sponsor shall forward to the Idaho State Bar an attendance roster specifying the number of credits earned by each participant.
- (4) **Late Filing.** Any application which is filed subsequent to the time limits established by this Rule may be rejected by the Executive Director as untimely.

**(Section (c) amended 3-1-88)*

- (d) **Conditions - Termination.** The Board reserves the right, at any time, to condition or terminate the status of any sponsor as a presumptively accredited sponsor.

RULE 404. Credit for Attendance - Credit for Teaching.

Continuing legal education credits may be earned by attending or teaching in continuing legal education activities which have been approved pursuant to Rules 403(b) and 403(c) as follows:

**(a) Credit for Attendance.* One (1) credit hour shall be given for each hour actually spent by the active member in attendance at an accredited course. No credit shall be given for:

- (1) Time spent in introductory remarks, coffee and luncheon breaks; business meetings; or other activities not involving the educational aspects of the course.
- (2) Any course attended in preparation for admission to the practice of law.
- (3) Any course attended before admission to practice law in Idaho.

**(b) Credit for Teaching.* Three (3) credit hours shall be given for each hour actually spent teaching in an accredited course. No credit will be given for:

- (1) Time spent in preparation.
- (2) Time spent teaching in a program that is directed primarily to:
 - (A) Persons preparing for admission to the practice of law.

(B) Persons who are non-lawyers.

- (3) In cases of panel presentations, credit shall be calculated by multiplying the actual number of course hours by three and dividing the number of panel members involved.

**(Sections (a) & (b) amended 3-1-88)*

- (c) **Carryover Credit.** Except as provided by Rule 402(b), no credit for attending or teaching a continuing legal education activity shall be applicable to any reporting period other than that during which the credit is actually earned.

RULE 405. Processing Applications for Accreditation of Continuing Legal Education Activities.

Applications for presumptive approval under Rule 404(b), for prior or subsequent accreditation under Rule 403(c) shall be processed in the following manner:

**(a) Application Fee.* All applications for accreditation of CLE programs, including those for presumptively accredited organizations, but excepting those submitted by the Idaho Supreme Court, the Idaho State Bar and its Sections or District Bar Associations, the Idaho Law Foundation, Inc., and individual members of the Idaho State Bar shall be accompanied by an application fee of forty (\$40.00) dollars.

**(Section (a) added 3-15-90 ; amended 9-19-96 & 9-17-04)*

**(b) Executive Director Powers and Duties.* Upon receipt of the written application for accreditation of a continuing legal education activity, the Executive Director shall:

- (1) examine and evaluate the application following the standards for accreditation established by Rule 403(a);
- (2) approve or deny all or any portion of individual courses and programs for which accreditation is sought; and
- (3) determine the number of credit hours to be allowed for each educational activity.

**(Section (b) amended 3-1-88)*

(c) **Decision.** The Executive Director shall give, or cause to be given, to the person or organization requesting accreditation written notice of his or her determination to approve or deny the application for accreditation.

- (1) **Contents of Notice.** The written notice shall advise the person or organization making the application that the request has been approved or denied. If the application is denied, the notice shall state the reasons for the determination and advise the affected applicant of the right to seek review of the determination. If the application is approved, notice shall state the numbers of credit hours allowed for the activity.
- (2) **Time of Giving Notice.** The written notice required by this subsection shall be given within fourteen (14) days following receipt of the application for accreditation.
- (3) **Service of Notice.** The notice shall be served upon the affected applicant by first class mail, postage prepaid, at the last known address of the applicant as reflected from the written application. Service shall be deemed complete upon depositing the notice in the United States mail.

(d) **Review.** Any person or organization whose application for accreditation of a continuing legal education activity has been denied may seek review of the Executive Director's decision by filing a written request with the Board of Commissioners, stating the reasons for the request.

- (1) **Time for Filing.** Any request for review of the Executive Director's decision shall be filed within fourteen (14) days following service of the notice that the application has been denied.
- (2) **Additional Information.** The affected applicant may present additional information to the Board, in writing, in person or both.

- (3) **Decision of Board.** Following its review, the Board may take such action as it deems appropriate and advise the affected applicant of its findings and the action taken. Unless the applicant files a petition for review with the Supreme Court as provided in Rule 407, the Board's decision shall be final.

RULE 406. Noncompliance

*(a) **Grounds.** The following shall be considered grounds for a finding of noncompliance with the rules governing mandatory continuing legal education:

- (1) failure to complete the minimum continuing legal education requirement provided by Rule 402(a);
- (2) failure to file the annual report under Rule 402(c); and
- (3) failure to complete the practical skills seminar, as required by Rule 402(f).

**(Section (a)(4) added 2-13-92 - Effective 1-1-93; and amended 6-10-98 - effective 7-1-98)*

(b) **Notice.** The Executive Director shall serve a written notice of noncompliance upon the affected lawyer, which notice shall state the nature of the noncompliance, advise the lawyer that he or she may cure the stated defect or file a petition for hearing before the Board, and further advise the lawyer that failure to either cure the defect or petition the Board shall result in summary impositions of sanctions provided in this Rule.

- (1) **Service.** Service of the notice of noncompliance shall be by certified or registered mail, return receipt requested, addressed to the lawyer's last known office address. The lawyer will be deemed to have received service on the date noted on the return receipt.

*(c) **Cure of Defect.** Noncompliance with the continuing legal education requirements may be cured by the affected lawyer by:

- (1) Completing the minimum continuing legal education requirement by March 1 of the year immediately following the calendar year in which the attorney is required to complete the continuing education requirement;
 - (A) **Fee.** An additional fee of fifty dollars (\$50.00) must be paid if an attorney requires additional time beyond the end of his or her reporting period to obtain the necessary credits to meet the mandatory continuing legal education requirements.
- (2) Filing the completed certificate of continuing legal education compliance.

**(Section (c) amended 3-1-88; and 6-10-98 - effective 7-1-98)*

(d) **Failure to Cure Defect.** If the attorney fails to cure the default as provided in subsection (c) of this Rule, the Executive Director shall transfer the attorney to inactive status and notify the attorney, the Supreme Court and the judges of the courts of general jurisdiction of the transfer to such status.

(e) **Petition.** The Board shall hold a hearing concerning noncompliance only upon written petition by the lawyer, a copy of which must be served upon the Executive Director.

(f) **Hearing.**

- (1) **Time and Place of Hearing.** The Board shall conduct the hearing within thirty (30) days after service of the petition for hearing. The hearing shall be held at the offices of the Idaho State Bar.
- (2) **Notice.** The Executive Director shall give the petitioner written notice of the hearing at least fourteen (14) days in advance of the hearing. The notice shall state the date, time and place of the hearing and shall advise the petitioner that he or she is entitled to be represented by counsel, to cross-examine witnesses and to present evidence on his or her own behalf.
- (3) **Conduct of Hearing.** The hearing shall be conducted in the manner usual to District Courts of the State of Idaho and

may be continued from time to time as the Board, in its discretion, may permit. The rules of evidence applicable to proceedings conducted in the District Courts of this State shall apply.

(4) **Decision.** The Board shall make and serve its findings and recommendations upon the lawyer within fifteen (15) days after the close of the hearing. Unless the affected lawyer files a petition for review before the Supreme Court as provided in Rule 407, the Board's decision shall be final.

(g) **False Report.** If the Executive Director has reason to believe that a false report has been filed, the Director shall forward the lawyer's name to Bar Counsel for review of the attorney's conduct under the Rules for Review of Professional Conduct.

RULE 407. Review by Supreme Court. The affected lawyer may seek review of the adverse determination of the Board, if within a period of twenty-one (21) days from the date of receipt of notice as provided in Rule 406(f)(4) the lawyer files a verified petition for review, together with an original and six (6) copies with the Clerk of the Court accompanied by a certificate showing service on the Executive Director of six (6) copies of the petition. A filing fee as provided in *Idaho Code* sections 1-402 and 1-2003 shall be paid to the Clerk. Such petition shall set forth with particularity the facts and acts upon which the petition is based.

(a) **Grounds.** Said petition shall be reviewable by the Supreme Court only if it is alleged that through the arbitrary and capricious action of the Board petitioner has been improperly transferred to inactive status.

(b) **Procedure After Initiation of Review.**

- (1) After the filing of the petition for review, the Board may file an answer with the Court within fourteen (14) days after service of the petition or within such further time as the Court may grant.
- (2) If the Board files an answer as provided in these Rules, the petitioner may file and serve a reply thereto within fourteen (14) days after service of the answer.
- (3) The Supreme Court shall make its determination from the pleadings filed or may order a hearing thereon for the purpose of hearing arguments upon such issues as may be specified by the Court, or appoint a master to hear evidence on such issues as the Court may direct.

(c) **Relief Granted.** In the event a petition is granted review under this Rule, and in the further event that upon such review the Supreme Court makes an express finding that the Board acted in an arbitrary and capricious manner and that by reason thereof petitioner has been improperly transferred to inactive status, the Court will grant appropriate relief in the circumstances.

(d) **Burden of Proof.** The petitioner shall have the burden of establishing to the satisfaction of the Supreme Court that the Board has acted in an arbitrary or capricious manner.

RULE 408. Reinstatement

(a) **Automatic Reinstatement.** A lawyer who has been transferred to inactive status pursuant to Rule 406(d) may be reinstated automatically upon the filing of proof that he or she has cured the noncompliance upon which the transfer was based as provided in Rule 406(c).

- (1) **Notice to Courts.** Upon a lawyer's automatic reinstatement under this Rule, the Executive Director shall give, or cause to be given, notice to the Supreme Court and the judges of the courts of record in the State of Idaho of the lawyer's reinstatement to the practice of law.

***RULE 409. Confidentiality.** The files, records and proceedings of the Board of Commissioners, as they relate to or arise

out of any failure of any attorney to satisfy the requirements of these Rules shall be deemed confidential and shall not be disclosed, except in furtherance of its duties or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings taken in accordance with these Rules.

**(Former Rule 409 moved and renumbered as Rule 305 on 3-15-90)*

***RULE 410. Idaho Lawyers Licensed in Other**

States. Pursuant to interstate compact, a lawyer licensed in certain jurisdictions that have agreed to reciprocal rules for Idaho lawyers may comply with MCLE requirements as follows.

- (a) An active member whose principal office for the practice of law is not in the state of Idaho may comply with the reporting rules set forth above by filing a compliance report on a prescribed form in which the member certifies that the member is subject to MCLE requirements in Oregon, Utah or Washington, and that the member has complied with the MCLE requirement of that jurisdiction during the member's reporting period in that state.

- *(b)* **Exceptions.** Subsection (a) notwithstanding, all lawyers shall be required to complete the Practical Skills Seminar, as provided by Rule 402(f). All lawyers claiming specialty certification shall comply with Rule 402(a)(3), provided that such lawyers may conform their reporting period to that of their principal state. All lawyers admitted to practice law pursuant to Rule 204A shall comply with continuing legal education requirements in subsection (e) of that rule.

**(Rule 410 added 2-7-97 - Effective 7-1-97)*

**(Section (b) amended 3-17-05 and 6-5-06)*

***SECTION V**
Rules For Review Of Professional Conduct
*(*Section V rescinded and replaced 2-19-08 – effective 7-1-08)*

RULE 500. Jurisdiction - Effective Date

- (a) **Power of Supreme Court.** The Supreme Court has the inherent power and the exclusive responsibility within the State to maintain appropriate standards of Professional Conduct and to structure and administer a system to review the Professional Conduct of each Lawyer in the State.
- (b) **Powers of Lower Courts.** These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.
- (c) **Effective Date.** These Rules shall become effective on July 1, 2008. Any proceeding then pending in which a Hearing Committee has been appointed shall be concluded pursuant to the Rules existing immediately prior to the effective date of these Rules.

RULE 501. Definitions. The following capitalized terms, as used in these Rules, shall have the meanings set forth below:

- (a) **Bar.** "Bar" means the Idaho State Bar.
- (b) **Bar Counsel.** "Bar Counsel" means any disciplinary counsel of the Idaho State Bar.
- (c) **Board of Commissioners.** "Board of Commissioners" means the duly elected governing body of the Idaho State Bar.
- (d) **Clerk.** "Clerk" means the Clerk of the Professional Conduct Board of the Idaho State Bar.
- (e) **Conviction.** "Conviction" means a plea of nolo contendere, a plea of guilty, a jury verdict of guilty or a court decision of guilt, whether a formal judgment of conviction has been entered, regardless whether sentence has been imposed, withheld or suspended.
- (f) **District Court.** "District Court" means a court of general jurisdiction in the State of Idaho.
- (g) **Formal Charges.** "Formal Charges" means any disciplinary action seeking the Sanction of disbarment, suspension, public censure or public reprimand.
- (h) **Grievant.** "Grievant" means anyone who files in the office of Bar Counsel a written statement alleging that a Lawyer has engaged in misconduct.
- (i) **Hearing Committee.** "Hearing Committee" means a three person committee of the Professional Conduct Board, as provided in Rule 503.
- (j) **Lawyer.** "Lawyer" means a person who meets the qualifications for and is duly admitted to the practice of law in the State of Idaho. When "lawyer" appears in lowercase in these Rules, it shall mean a person who is no longer duly admitted to practice law in the State of Idaho.
- (k) **Professional Conduct.** "Professional Conduct" means conduct that occurs within or without the attorney-client relationship that reflects upon the Lawyer's fitness to practice law.
- (l) **Professional Conduct Board.** "Professional Conduct Board" means the Professional Conduct Board of the Bar, as provided in Rule 502.
- (m) **Respondent.** "Respondent" means a Lawyer whose Professional Conduct is under review or whose competency or disability status is under review.
- (n) **Rules.** "Rules" means Section V of the Idaho Bar Commission Rules, Rules for Review of Professional Conduct.
- (o) **Sanction.** "Sanction" means any of the disciplinary sanctions provided in Rule 506. "Sanction" also includes any other restriction upon a Lawyer's right to practice law authorized or

approved by any duly authorized Professional Conduct enforcement authority in this or any other jurisdiction.

- (p) **Serious Crime.** "Serious Crime" means:
 - (1) any felony; or
 - (2) any lesser crime that reflects adversely on the Lawyer's honesty, trustworthiness or fitness as a Lawyer. Such lesser crimes include, but are not limited to, any crime that involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a Serious Crime.
- (q) **State.** "State" means the State of Idaho.
- (r) **Supreme Court.** "Supreme Court" means the Supreme Court of the State of Idaho.

RULE 502. Professional Conduct Board

- (a) **Membership of Board.** The Board of Commissioners shall appoint, with the approval of the Supreme Court, members to a board to be known as "The Professional Conduct Board of the Idaho State Bar." The Professional Conduct Board shall consist of no less than thirty members. Regardless of its size, approximately two-thirds of the Professional Conduct Board shall be comprised of members of the Bar in good standing and the remaining members shall be non-lawyer citizens of the State. All appointments shall be for three-year terms, which are staggered, and which may be renewed. The Board of Commissioners, with the approval of the Supreme Court, shall fill any vacancies for the remainder of an unexpired term.
- (b) **Officers.** The Board of Commissioners shall designate one Lawyer member as Chair and another Lawyer member as Vice-Chair. The Chair (and when designated by the Chair, the Vice-Chair) shall supervise the general functioning of proceedings described by these Rules, may call meetings of the Professional Conduct Board, as necessary, and perform such other duties as may be authorized by the Board of Commissioners or the Supreme Court.
- (c) **Powers and Duties of Professional Conduct Board.** The Professional Conduct Board acting by itself, or through delegation to its Chair, Vice-Chair, or the Clerk, shall exercise the following powers and duties:
 - (1) Rule on procedural motions prior to the assignment of a matter to a Hearing Committee;
 - (2) Appoint Hearing Committees and appoint chairs from among the Lawyer members of the Hearing Committees;
 - (3) Appoint replacements for members of Hearing Committees who may be unable to serve due to conflict, disqualification, incapacity, or other inability to serve;
 - (4) Assign Professional Conduct matters to Hearing Committees;
 - (5) Appoint, with the specific approval of the Supreme Court, a Hearing Committee in cases in which misconduct is alleged against Bar Counsel;
 - (6) Have its Hearing Committees make findings of fact, conclusions of law and recommendations with regard to the cases assigned to such Hearing Committees;
 - (7) Have its Hearing Committees recommend, impose, and administer Sanctions; and

- (8) Maintain records of matters brought before the Professional Conduct Board, as may be required by these Rules.
- (d) **Compensation and Expenses.** Members of the Professional Conduct Board shall receive no compensation for their services but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.

RULE 503. Hearing Committees

- (a) **Establishment and Membership of Hearing Committees.** Each Hearing Committee shall consist of three members of the Professional Conduct Board, two of whom shall be members of the Bar in good standing, and one of whom shall be a non-lawyer. With regard to any assigned matter, no Lawyer member of the Hearing Committee shall reside or have his or her principal place of business within the same judicial district in which the Respondent has his or her principal place of business. Further, no Hearing Committee member shall be assigned to a Professional Conduct matter or petition for reinstatement if that member has been assigned previously to a Professional Conduct matter involving the Respondent.
- (b) **Powers and Duties.** Hearing Committees shall exercise the following powers and duties:
 - (1) Conduct disciplinary proceedings assigned by the Professional Conduct Board in accordance with these Rules;
 - (2) Rule upon motions and other matters assigned by the Professional Conduct Board and/or delegate such rulings to the Hearing Committee chair;
 - (3) Request the further investigation of any matter assigned by the Professional Conduct Board;
 - (4) Make findings of fact, conclusions of law and recommendations with regard to the cases assigned by the Professional Conduct Board;
 - (5) Recommend, impose and/or administer Sanctions, as provided in these Rules;
 - (6) Recommend interim suspension, as provided in Rule 510(c); and
 - (7) Undertake other related tasks assigned by the Professional Conduct Board or the Supreme Court.
- (c) **Quorum.** Three members shall constitute a quorum for the purpose of hearing evidence and issuing findings and conclusions. All decisions of a Hearing Committee shall be by majority vote of the three Hearing Committee members. Participation by telephone or other electronic means shall constitute presence in person.
- (d) **Compensation and Expenses.** Members of Hearing Committees shall receive no compensation for their services but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.
- (e) **Conflict of Interest.** Hearing Committee members shall not take part in any proceedings in which a judge, similarly situated, would be required to recuse himself or herself.

RULE 504. Bar Counsel

- (a) **Appointment and Qualifications.** Bar Counsel shall be appointed by the Board of Commissioners and shall be a member in good standing of the Bar.
- (b) **Powers and Duties.** With respect to the review of a Lawyer's Professional Conduct, Bar Counsel shall have the following powers and duties:
 - (1) To evaluate, investigate and dispose of grievances, as provided in Rule 509;
 - (2) To prosecute all Professional Conduct review proceedings before the Professional Conduct Board and the Supreme Court;
 - (3) To maintain records of Professional Conduct matters, as may be required by these Rules, keep the members of the

Professional Conduct Board apprised of the status of disciplinary matters and compile statistics to aid in the administration of the system;

- (4) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to any constraints that may be imposed by the Board of Commissioners; and
- (5) To perform all other duties and functions as may be required by these Rules, the Idaho Bar Commission Rules, the Board of Commissioners or the Supreme Court.

RULE 505. Grounds for Sanctions. The following shall constitute misconduct and shall be grounds for imposition of Sanctions:

- (a) **General.** Acts or omissions by a Lawyer, individually or in concert with any other person or persons, which violate the Idaho Rules of Professional Conduct, as amended, or any other ethical canon or requirement adopted by the Supreme Court, whether the acts or omissions occurred in the course of an attorney-client relationship.
- (b) **Conviction of a Serious Crime.** Conviction of a Serious Crime, and/or the failure to report a Conviction as provided in Rule 512(a).
- (c) **Sanctions Imposed in Another Jurisdiction.** Any act or omission that results in a Sanction, as defined in Rule 501(o), which is authorized or approved by any duly authorized Professional Conduct enforcement authority in another jurisdiction.
- (d) **Violation of Rules and Orders.** Violation of any rule or order imposed as a result of review of a Lawyer's Professional Conduct, including a Lawyer's failure to pay restitution, costs or expenses imposed under Rule 506.
- (e) **Failure to Cooperate with or Respond to Disciplinary Authorities.** Failure, without justifiable grounds, to cooperate with or respond to a request from the Supreme Court, the Professional Conduct Board, a Hearing Committee or Bar Counsel.

RULE 506. Sanctions. Disciplinary Sanctions may consist of any one or more of the following:

- (a) **Disbarment.** Disbarment is the revocation of a lawyer's license or authority to practice law in this State or in any other jurisdiction. Only the Supreme Court may order disbarment in this State. A lawyer disbarred in this State who desires to again be admitted shall comply with all Bar admission requirements found in Section II of the Idaho Bar Commission Rules. A disbarred lawyer making such application shall have the burden of overcoming the rebuttable presumption of "unfitness to practice law." In no event shall a disbarred lawyer make application for admission to the Bar sooner than five years from the effective date of disbarment.
- (b) **Resignation in Lieu of Disciplinary Proceedings.** Any resignation in lieu of disciplinary proceedings in this or any other jurisdiction shall have the same effect as disbarment. A resignation in lieu of disciplinary proceedings cannot be issued by a Hearing Committee; rather, it is a negotiated Sanction between the Respondent and Bar Counsel. The Supreme Court must approve any resignation in lieu of disciplinary proceedings in this State. A lawyer who resigns in lieu of disciplinary proceedings and desires to again be admitted shall comply with all Bar admission requirements found in Section II of the Idaho Bar Commission Rules. A lawyer making such application shall have the burden of overcoming the rebuttable presumption of "unfitness to practice law." In no event shall a lawyer who resigns in lieu of disciplinary proceedings make application for

admission to the Bar sooner than five years from the effective date of his or her resignation.

- (c) **Suspension.** Suspension is the denial of the right to practice law for a specific period of time not to exceed five years. Only the Supreme Court may order a suspension in this State. A Lawyer who has been suspended and desires to again be admitted shall comply with the reinstatement procedures provided in Rule 518. Rule 510 shall govern interim suspensions.
- (d) **Public Censure.** Public censure is an official, written reprimand regarding a Lawyer's Professional Conduct, which shall be published in the Idaho Reports. A public censure declares the Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only the Supreme Court can issue a public censure. In addition to the Idaho Reports, all public censures shall be published in the official Bar publication, on the official website of the Bar, and in a newspaper of general circulation in the judicial district where the Lawyer maintains his or her principal place of business.
- (e) **Public Reprimand.** Public reprimand is a public, written reprimand regarding a Lawyer's Professional Conduct. A public reprimand declares the Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only the Professional Conduct Board may issue a public reprimand. All public reprimands shall be published in the official Bar publication and on the official website of the Bar.
- (f) **Probation.** Probation is the continued right to practice law subject to such conditions as may be imposed by a court or by a duly authorized Professional Conduct enforcement authority. In this State, only the Supreme Court may impose conditions of probation that limit the Lawyer's license to practice law. Conditions of probation that do not otherwise limit the Lawyer's license to practice law can also be imposed by the Supreme Court, the Professional Conduct Board or Bar Counsel. Probation must be imposed for a specific period; provided, however, probation may be renewed for an additional period by consent or after a hearing to determine if there is a continued need. Probation may be imposed independently or in conjunction with any other Sanction.
- (g) **Private Reprimand.** Private reprimand is a private, written reprimand that declares a Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only Bar Counsel may impose a private reprimand. A private reprimand becomes a part of the permanent files of the Bar, but is not published.
- (h) **Informal Admonition.** Informal admonition is private, written discipline that declares a Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only Bar Counsel may informally admonish a Lawyer. An informal admonition becomes a part of the permanent files of the Bar, but is not published. An informal admonition is lesser in scope than a private reprimand and is the least severe form of discipline available.
- (i) **Restitution.** Restitution is the payment to persons financially injured and/or reimbursement to the Client Assistance Fund for claims paid from the fund for losses or claims resulting from a Lawyer's misconduct. Restitution may be imposed as a condition of any probation or in conjunction with any Sanction. Failure to pay imposed restitution establishes independent grounds for further discipline or Sanctions and/or may prevent reinstatement.
- (j) **Imposition of Costs.** Assessment of the expenses and costs of Professional Conduct investigations and proceedings may be imposed in conjunction with any other Sanction. Failure to pay imposed costs establishes independent grounds for further discipline or Sanctions and/or may prevent reinstatement.

RULE 507. Withheld Sanctions

- (a) **Sanctions that may be Withheld.** The Sanctions imposed under Rule 506(c)-(f) may be withheld in whole or in part, contingent upon the Respondent's observance of conditions imposed by the disciplinary authority invoking such Sanction. Such conditions may include the publication of the withheld Sanction.
- (b) **Motion for Order to Show Cause.** Upon violation of the conditions of a withheld Sanction, Bar Counsel may file with the Professional Conduct Board a Motion for Order to Show Cause why the withheld Sanction should be imposed.
 - (1) The motion shall allege that the Respondent has not abided by the conditions set forth in the order disciplining the Respondent/
 - (2) The motion shall be served upon:
 - (A) the Respondent at his or her last known address, and
 - (B) the Respondent's counsel of record, if any.
 - (3) The Chair of the Professional Conduct Board shall appoint a Hearing Committee, which shall schedule a hearing to ascertain the truth of the allegations set forth in the motion.
 - (4) The Bar shall have the burden of proof that the Respondent has failed to adhere to the conditions set forth in the disciplinary order.
 - (5) Following the hearing, the Hearing Committee shall make findings and, if the Bar has carried its burden of proof, recommend or order that the withheld Sanction be imposed.
- (c) **Imposition of a Previously Withheld Sanction.** If the Bar carries its burden of proof on the Motion for Order to Show Cause, the previously withheld Sanction may be imposed:
 - (1) by order of the Hearing Committee, if the withheld Sanction was imposed originally by a Hearing Committee or by Bar Counsel; or
 - (2) by order of the Supreme Court, if the withheld Sanction was imposed originally by the Supreme Court.

RULE 508. Petitions Against Members of the Board of Commissioners, Professional Conduct Board or Bar Counsel

- (a) **Board of Commissioners - Professional Conduct Board.** Grievances against a member of the Board of Commissioners or a Lawyer member of the Professional Conduct Board alleging grounds for the imposition of Sanctions, or against any non-lawyer member of the Professional Conduct Board alleging misconduct in the performance of his or her duties, shall be submitted directly to the Supreme Court. Upon receipt of a grievance under this Rule, the Supreme Court may:
 - (1) Consider the matter on the basis of the grievance;
 - (2) Appoint an investigator or independent counsel to investigate the matter and make a report to the Supreme Court;
 - (3) Issue an order from among the options listed in Rule 509(c)(1-4);
 - (4) Cause Formal Charges to be filed;
 - (5) Cause a petition for interim suspension to be filed; and/or
 - (6) Take such other steps as are necessary to facilitate the prompt resolution of the grievance.
- (b) **Bar Counsel.** Grievances, against Bar Counsel alleging grounds for the imposition of Sanctions shall be submitted directly to the Professional Conduct Board, which, with the approval of the Supreme Court, shall appoint a Hearing Committee to consider the grievance. Upon receipt of a grievance against Bar Counsel under this section, a Hearing Committee may:
 - (1) Consider the matter on the basis of the grievance;
 - (2) Require Bar Counsel to make a response;
 - (3) Appoint an investigator;

- (4) Issue an order from among the options listed in Rule 509(c)(1-6); and/or
- (5) Take such other steps as are necessary to facilitate the prompt resolution of the grievance.

RULE 509. General Procedure for Disciplinary Proceedings

- (a) **Evaluation.** Bar Counsel shall evaluate all information and grievances coming to his or her attention to determine the nature of the issue. Bar Counsel may refer the information or grievance to another entity if its subject matter falls outside the jurisdiction of these Rules or the Rules of Professional Conduct. If the information or grievance alleges facts that, if true, would constitute a violation of these Rules or the Rules of Professional Conduct, Bar Counsel shall conduct an investigation.
- (b) **Investigation.** All investigations shall be conducted by or under the authority and direction of Bar Counsel. Upon the conclusion of an investigation, Bar Counsel may:
 - (1) Disregard or dismiss the matter as unfounded, frivolous or beyond the purview of these Rules or the Rules of Professional Conduct and discontinue the investigation and proceedings concerning the matter; or
 - (2) Take any of the disciplinary actions provided by Rule 509(c).
- (c) **Disposition by Bar Counsel.** If, after due investigation, Bar Counsel determines that a violation of these Rules or the Rules of Professional Conduct has occurred, Bar Counsel may:
 - (1) Issue an informal admonition or private reprimand to the Respondent;
 - (2) Impose probation as provided by Rule 506(f) either as an independent Sanction or in conjunction with actions taken under subsection (c)(1) above;
 - (3) Impose restitution and/or costs as provided by Rules 506(i) and (j), either as an independent Sanction or in conjunction with actions taken under subsections (c)(1) or (c)(2) above;
 - (4) Seek, in appropriate circumstances, transfer to disability inactive status under Rule 515;
 - (5) File Formal Charges, with concurrence of the Board of Commissioners; and/or
 - (6) Petition for interim suspension, as provided in Rule 510.

Bar Counsel shall not recommend a disposition other than dismissal without first providing the Respondent with written notice of the substance of the matter and affording him or her the opportunity to respond to the allegations. Bar Counsel shall also provide written notice to the Grievant regarding the disposition of the matter stating the reasons for the action taken.
- (d) **Request for Review.** Either the Grievant or Respondent may request review by a Hearing Committee of Bar Counsel's disposition under subsections (b)(1), (c)(1), (2), or (3) in the following manner:
 - (1) **Mode and Content of Request.** A written request for such review, stating the reasons for the request, shall be sent to the Clerk of the Professional Conduct Board within 14 days following the receipt of notice by the Respondent or Grievant under subsection (c) of this Rule.
 - (2) **Service of Request.** The Clerk shall send a copy of the request for review to the Respondent or Grievant.
 - (3) **Assignment to Hearing Committee.** The Chair of the Professional Conduct Board shall appoint from among its approved membership a Hearing Committee to review the matter. Within 14 days of the assignment to a Hearing Committee, the Clerk shall notify the Grievant, Respondent and Bar Counsel of the assignment. The Clerk shall forward a copy of the request for review, together with the file concerning the matter, to the Hearing Committee, the Grievant and the Respondent.

- (4) **Review by Hearing Committee.** The Hearing Committee shall review the matter upon the record before it, unless either party requests a hearing. If the party seeking review of the decision desires such a hearing, he or she shall so state in the request for review. If the other party desires a hearing, he or she shall make a request, in writing, to the Clerk of the Professional Conduct Board within seven days of being served with the request for review. All hearings shall be by telephone, unless the Hearing Committee prescribes another method. The Hearing Committee shall review the existing record prior to holding a hearing, if one is requested. If a hearing is held, the parties shall be permitted to file briefs and make oral argument related to the grievance under review, and the Hearing Committee may ask questions regarding the record before it. The Hearing Committee chair may limit the presentation at the hearing, in his or her sole discretion. All written materials related to the hearing shall be sent to the Clerk, who shall disseminate them to all parties and to the Hearing Committee.
- (5) **Decision.** The Hearing Committee, following its review, may:
 - (A) remand the matter, or any new matter arising from the hearing, to Bar Counsel for further investigation;
 - (B) approve Bar Counsel's disposition;
 - (C) reject Bar Counsel's disposition and dismiss the matter;
 - (D) recommend a modification and remand the matter to Bar Counsel for disposition; or
 - (E) recommend the filing of Formal Charges.
- (6) **Time for Rendering Decision.** The Hearing Committee shall render its decision within 21 days following the date upon which the record is submitted to the Hearing Committee or the date of the telephonic hearing (if any), whichever is later.
- (7) **Service of Decision.** The Hearing Committee chair shall enter an appropriate order reflecting the decision of the Hearing Committee and file the same with the Clerk, who shall then serve the order upon Grievant, Respondent and Bar Counsel.
- (8) **Effect of Hearing Committee Decision.** If the Hearing Committee's decision results in no Sanction being imposed on the Respondent, its review of Bar Counsel's disposition shall be final. If the filing of Formal Charges is recommended by the Hearing Committee, subsequent proceedings shall be processed as provided in Rule 511.
- (9) **Supreme Court Review.** If the Hearing Committee's decision results in a Sanction being imposed on the Respondent, either the Grievant or Respondent may seek Supreme Court review of the Hearing Committee's decision. A written petition for such review, stating the reasons for the request, shall be filed with the Supreme Court, within 21 days of service of the Hearing Committee's decision. The petition shall contain a simple statement of the reasons the Grievant or Respondent believes that the Hearing Committee decision is clearly erroneous or arbitrary and capricious. Upon receipt of a petition under this subsection, the Supreme Court may, in its sole discretion, order briefing, allow oral argument or decide the matter upon the petition before it.

RULE 510. Interim Suspension

- (a) **Grounds.** The Supreme Court may enter an order of interim suspension if:
 - (1) a Lawyer is convicted of a Serious Crime;
 - (2) a Lawyer's Professional Conduct poses a substantial threat of serious harm to the public, and the alleged conduct, if true, would subject the Lawyer to the imposition of

Sanctions under Rule 505 or to transfer to disability inactive status as provided in Rule 515; or

- (3) a Lawyer has failed, without justifiable grounds, to cooperate with or respond to a request from the Supreme Court, the Professional Conduct Board, a Hearing Committee or Bar Counsel.
- (b) **Petition for Interim Suspension by Bar Counsel.** At any time, Bar Counsel may file a petition with the Supreme Court, supported by affidavit setting forth the specific facts upon which the petition is based, requesting that the Lawyer be placed on interim suspension. Contemporaneously with the filing of the petition, Bar Counsel shall make a reasonable attempt to provide the Lawyer with notice that a petition for immediate interim suspension has been transmitted to the Supreme Court. Such notice may include personal service, service by mail, notice by telephone or notice by other electronic means.
- (c) **Recommendation by Hearing Committee.** At any point after the filing of Formal Charges, a Hearing Committee may give written direction to Bar Counsel to petition the Supreme Court for an order of interim suspension. The Hearing Committee shall base all recommendations concerning interim suspension upon the criteria set forth in subsection (a) of this Rule.
- (d) **Court Action.** Upon receipt of a petition for interim suspension, the Supreme Court may:
 - (1) order interim suspension;
 - (2) deny the petition for interim suspension;
 - (3) make an order of reference pursuant to Rule 525(j); and/or
 - (4) schedule the matter for oral argument.Any order of interim suspension shall be served upon the Respondent and Bar Counsel by the clerk of the Supreme Court.
- (e) **Limitations on Practice and Notice.** An interim suspension under this Rule shall constitute a suspension of the Lawyer for purposes of Rules 516 and 517.
- (f) **Motion for Dissolution or Amendment.** Any motion for dissolution or amendment of an order of interim suspension shall be filed with the Supreme Court.
 - (1) **Service and Content of Motion.** The motion shall be in writing, supported by affidavits setting forth specific reasons why the order of interim suspension should be dissolved or amended. A copy of the motion, together with the supporting affidavits, shall include proof of compliance with Rules 516 and 517 and shall be served upon the other party.
 - (2) **Time for Filing.** The motion for dissolution or amendment may be filed at any time following the entry of the Supreme Court's order of interim suspension.
 - (3) **Applicable Rules.** Any motion filed under this subsection shall be administered pursuant to the Idaho Appellate Rules.
- (g) **Injunction on Maintenance of Trust Funds.** Any order of interim suspension that restricts the Respondent's maintenance of a trust account in connection with his or her practice of law, when served on any bank maintaining such trust account, shall serve as an injunction to prevent such bank from making further payment from such trust account or accounts except in accordance with restrictions stated in the order.

RULE 511. Formal Charge Proceedings

- (a) **Action by Board of Commissioners.** Before a Formal Charge complaint shall be filed against a Lawyer by Bar Counsel, the Board of Commissioners must make a finding of probable cause and approve the filing.
- (b) **Complaint.** Bar Counsel shall institute Formal Charges by filing a complaint with the Clerk. The allegations of the complaint must be specific enough to inform the Respondent of the alleged misconduct. A copy of the complaint shall be served upon the Respondent, as provided in Rule 523(c).

- (c) **Assignment to Hearing Committee.** Upon the filing of a Formal Charge complaint, the Chair of the Professional Conduct Board shall appoint, from its approved membership, a Hearing Committee to conduct the matter. Upon assignment of the matter to a Hearing Committee, the Clerk shall send the notice of assignment, a copy of the complaint and any subsequent pleadings to the Hearing Committee members.
- (d) **Answer.** The Respondent shall file his or her written answer with the Clerk and serve the answer upon Bar Counsel within 21 days after service of the complaint, unless Bar Counsel has extended the time to answer. The Clerk shall send the answer to the Hearing Committee.
- (e) **Failure to Answer.** If the Respondent fails to answer the complaint within the prescribed time, or the time as extended, the factual allegations of the complaint shall be deemed admitted, unless Respondent demonstrates his or her failure to answer resulted from mistake, inadvertence, surprise or excusable neglect.
- (f) **Scheduling Order.** Within 21 days after the Hearing Committee has received the answer, the chair of the Hearing Committee shall hold a scheduling conference with the parties, for the purpose of establishing timetables for the completion of the case. Thereafter, the chair shall issue a scheduling order, declaring discovery deadlines, trial dates and any other significant dates for the conduct of the matter. If the Respondent has failed to answer the complaint within the time prescribed, or the time as extended, the scheduling order shall also specify that all factual allegations of the complaint have been deemed admitted and/or may provide for the procedure to determine whether Respondent's failure to respond is due to mistake, inadvertence, surprise or excusable neglect. The Hearing Committee chair should seek to conduct the matter so the hearing is held within 120 days from the scheduling conference. The Clerk shall serve copies of the scheduling order upon all parties.
- (g) **Place and Manner of Hearing.** If a resident of Idaho, Respondent has the right to have the hearing held in the county of his or her residence provided he or she has requested the same in his or her answer. If not a resident of Idaho or if the Respondent has not requested to have the hearing held in the county of his or her residence in the answer, the hearing shall be at the place designated by the chair of the Hearing Committee. The hearing shall be conducted in the manner provided in Rule 525 and may be continued from time to time as the Hearing Committee, in its discretion, may permit.
- (h) **Hearing Committee Findings, Conclusions and Recommendations.** In every Formal Charge case assigned to it, the Hearing Committee shall issue its findings of fact, conclusions of law and recommendations.
 - (1) **Service on Parties.** The Hearing Committee shall send to the Clerk, who shall serve upon all parties, the findings of fact, conclusions of law and recommendations within 28 days following the conclusion of the hearing.
 - (2) **Motion to Alter or Amend.** A motion to alter or amend the findings and recommendations of a Hearing Committee may be filed by either party, not later than 14 days after those findings of fact, conclusions of law and recommendations have been served upon the parties. The Hearing Committee shall consider the motion, and shall, within 14 days of receipt of the motion:
 - (A) alter or amend its findings of facts, conclusions of law, and recommendations;
 - (B) deny the motion; or
 - (C) schedule the motion for hearing.
 - (3) **Filing with Clerk.** If no motion to alter or amend is filed, the findings of fact, conclusions of law, and recommendations become final within 14 days after they are

issued by the Hearing Committee. If a motion to alter or amend has been filed, the findings of fact, conclusions of law, and recommendations become final within 14 days following disposition of such motion. The Clerk shall immediately serve a copy of the final findings of fact, conclusions of law and recommendations upon the parties.

- (i) **Recommendation of Public Reprimand.** If the final findings of fact, conclusions of law and recommendations of the Hearing Committee is to impose a public reprimand as provided in Rule 506(e), the public reprimand will be imposed unless either party appeals that recommendation. To appeal such recommendation, the party must file a notice of intent to appeal with the Clerk within 21 days of service of the recommendation. The Clerk shall file the record with the Supreme Court within 21 days of receipt of the notice of intent to appeal. Upon the filing of the record with the Supreme Court, the appeal will proceed as set forth in subsection (k) of this Rule. If the Hearing Committee's recommendation to impose a public reprimand is not appealed within 21 days as set forth above, the public reprimand shall be imposed and published as provided in Rule 506(e).
- (j) **Recommendation of Public Censure, Suspension or Disbarment.** Within 21 days of service of the Hearing Committee's recommendation of a public censure, suspension or disbarment, the Clerk shall transmit all findings of fact, conclusions of law and recommendations to the Supreme Court, together with the entire record of the proceeding. In all cases in which a Hearing Committee recommends suspension or disbarment, it may recommend the Supreme Court immediately suspend the Respondent from the practice of law pending Supreme Court resolution of the matter. This subsection also applies in all cases where the Sanction of public censure and/or suspension has been withheld, as provided in Rule 507.
- (k) **Supreme Court Review.** In Formal Charge proceedings, the Respondent and/or Bar Counsel may appeal to the Supreme Court all Hearing Committee decisions that fully dispose of the entire proceeding.
 - (1) **Appeal Filed.** Within 21 days following the filing in the Supreme Court of findings of fact, conclusions of law and recommendations, either party may file a Notice of Appeal with the Supreme Court. Such Notice shall be a brief statement indicating the party intends to contest any or all of the findings of fact, conclusions of law and recommendations of the Hearing Committee. The Notice shall be served on the other party. After the filing of the record and Notice of Appeal with the Supreme Court, the parties shall file briefs on the schedule to be provided by the Supreme Court. Oral argument, if desired by the Supreme Court, shall be at a time and place scheduled by the Supreme Court.
 - (2) **No Appeal Filed.** If no appeal is filed with the Supreme Court within 21 days following the filing in the Supreme Court of the findings of fact, conclusions of law and recommendations, the Supreme Court may enter its decision or order review on its own motion. The Supreme Court may modify the Hearing Committee's recommendations upon notice and opportunity to be heard. The Supreme Court may also remand a case to the Hearing Committee for further consideration.

RULE 512. Lawyers Convicted of Serious Crime

- (a) **Lawyer's Duty to Report.** Any Lawyer convicted of a Serious Crime in any jurisdiction shall report that fact to the Bar within 14 days of the occurrence of that Conviction. Failure to make such a report shall, in itself, constitute grounds for imposition of Sanctions under Rule 505.

- (b) **Determination of Serious Crime.** Upon being advised that a Lawyer has been convicted of a crime, Bar Counsel shall determine whether the crime constitutes a Serious Crime. If the crime is a Serious Crime, Bar Counsel shall begin Formal Charge proceedings against the Respondent, as provided in Rule 511. Bar Counsel may also petition the Supreme Court for interim suspension, as provided in Rule 510. If the crime is not a Serious Crime, Bar Counsel shall process the matter in the same manner as any other information coming to his or her attention.
- (c) **Conviction as Conclusive Evidence.** A certified copy of a judgment of Conviction constitutes conclusive evidence that the Lawyer committed the crime, and the sole issue in any hearing regarding the Conviction shall be the nature and extent of the Sanction to be imposed.
- (d) **Dissolution or Amendment of a Sanction upon Vacation or Reversal of Criminal Conviction.** If an appeals court vacates or reverses a Lawyer's Conviction of a Serious Crime, or if a trial court enters an order granting a motion for a new trial, a motion for judgment of acquittal, or a motion to withdraw a plea of guilty that removes a Lawyer's Conviction of a Serious Crime, which Conviction was a basis for a Sanction under these Rules, the Lawyer may file with the Clerk a motion for dissolution or amendment of the Sanction, which shall be handled, as provided in Rule 509(d). Any reinstatement or readmission resulting from a dissolution or amendment of a Sanction may provide for such conditions as the Supreme Court deems appropriate in the interest of justice, the public, the Respondent, the Bar and/or the former or prospective clients of the Respondent. The dissolution or amendment of a Sanction will not automatically terminate any formal proceeding then pending against the Lawyer, the disposition of which shall be determined by the Hearing Committee on the basis of the available evidence other than Conviction.

RULE 513. Reciprocal Sanctions

- (a) **Duty of Lawyers.** All Lawyers upon whom a Sanction has been imposed in another jurisdiction shall so inform Bar Counsel within 14 days of the imposition of the Sanction. Failure to make such a report shall, in itself, constitute grounds for imposition of Sanctions under Rule 505.
- (b) **Private Discipline in Another Jurisdiction.** Upon being informed that private discipline has been imposed upon a Lawyer in another jurisdiction that is the equivalent of a private reprimand or an informal admonition under Rule 506(g) or (h), Bar Counsel may issue a private reprimand or informal admonition in this State with or without further investigation.
- (c) **Public Discipline in Another Jurisdiction.** Upon being informed that a Sanction has been imposed upon a Lawyer, Bar Counsel may seek an ex parte order from the Chair of the Professional Conduct Board directing the Lawyer to show cause, if any, why the identical Sanction should not be imposed in this State.
- (d) **Hearing Committee Procedures.** The Chair of the Professional Conduct Board, following the issuance of the order to show cause, shall assign the matter to a Hearing Committee to conduct the show cause hearing.
 - (1) **Show Cause Hearing.** Within ten days following the issuance of the Chair's assignment order, the Hearing Committee chair shall hold a scheduling conference with the parties to schedule a hearing on the order to show cause. Thereafter, the Hearing Committee chair shall issue a scheduling order with notice to all parties.
 - (2) **Effect of Sanction in Another Jurisdiction.** A final determination of misconduct by the Respondent in another jurisdiction is conclusive and shall not be subject to relitigation in this State. Any resignation in lieu of

disciplinary proceedings in any jurisdiction shall be deemed a final determination of misconduct by the Respondent.

- (3) **Scope of Hearing.** After hearing, the Hearing Committee shall recommend the imposition of an identical Sanction in this State unless the Hearing Committee finds that Respondent has shown by clear and convincing evidence that it appears clearly, from the face of the record from which the Sanction is predicated, that:
- (A) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (B) imposing an identical Sanction in this State would result in grave injustice.
- (4) **Procedure Following Hearing.** After the show cause hearing (regardless whether the Respondent appears before the Hearing Committee), the Hearing Committee shall issue its findings of fact, conclusions of law and recommendations and proceed as provided in Rule 511(h).
- (A) **Recommendation of Public Reprimand.** If the Hearing Committee recommends the imposition of a public reprimand, the case shall proceed as provided in Rule 511(i).
 - (B) **Recommendation of Public Censure, Suspension or Disbarment.** If the Hearing Committee recommends the imposition of a public censure, suspension or disbarment, the case shall proceed, as provided in Rule 511(j).
- (e) **Effect of Stay of Discipline in Other Jurisdiction.** If the Sanction imposed in the other jurisdiction has been stayed there, any reciprocal Sanction imposed in this State shall be deferred until the stay expires.
- (f) **Appeals.** All appeals of the imposition of reciprocal Sanctions shall proceed as provided in Rule 511(k).

Rule 514. Imposition of Sanctions by Stipulation

- (a) **Stipulation Contents.** Following the filing of Formal Charges against a Respondent, the Respondent and Bar Counsel may resolve the matter by stipulation. Any stipulation shall set forth a summary of the Formal Charge allegations, admitted factual allegations, admitted violations of the Idaho Rules of Professional Conduct, charges being dismissed, if any, and the agreed upon Sanction. Bar Counsel and the Respondent shall sign the stipulation. Each stipulation shall also provide either:
- (1) if the Hearing Committee or the Supreme Court rejects the stipulation, Sanction or recommendation, each party has the right to withdraw from the stipulation and proceed to a hearing on the merits; or
 - (2) if the Hearing Committee or the Supreme Court rejects the stipulation, Sanction or recommendation, the parties agree that the Supreme Court may impose the Sanction it deems appropriate on the record or may take whatever action the Supreme Court deems appropriate.
- (b) **Consideration by Hearing Committee and Supreme Court.** After the stipulation has been executed, either party shall file it with the Clerk, who shall forward copies of it to the Hearing Committee. The Hearing Committee will consider the stipulation and enter its decision or order a hearing on its own motion.
- (1) **Public Reprimand.** If the stipulated Sanction is a public reprimand, and the Hearing Committee agrees that a public reprimand is the appropriate Sanction, the Hearing Committee shall issue an order imposing the public reprimand.
 - (2) **Public Censure, Suspension or Disbarment.** If the stipulated Sanction is a public censure, suspension, withheld public censure, withheld suspension or disbarment, and the Hearing Committee agrees that the stipulated Sanction is

appropriate, the Hearing Committee shall issue a recommendation to the Supreme Court. The Supreme Court will then consider the recommendation as set forth in Rule 511(k)(2) and enter its decision or order a hearing on its own motion.

Rule 515. Disability Inactive Status

- (a) **Involuntary Commitment or Adjudication of Incompetence.** If a Respondent has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order immediately transferring the Respondent to disability inactive status for an indefinite period until further order of the Supreme Court. A copy of the order shall be served, in the manner the Supreme Court may direct, upon the Respondent, his or her guardian and/or the director of the institution to which the Respondent has been committed.
- (b) **Inability to Properly Defend.** If a Respondent alleges in the course of a disciplinary proceeding an inability to assist in his or her defense due to mental or physical incapacity, Bar Counsel shall petition the Supreme Court to immediately transfer the Respondent to disability inactive status pending determination of the incapacity.
- (1) If the Supreme Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the Respondent retained on disability inactive status until the Supreme Court subsequently considers a petition for transfer of the Respondent to active status. If the Supreme Court grants the petition, the interrupted disciplinary proceeding shall resume as provided in these Rules.
 - (2) If the Supreme Court determines the claim of inability to defend to be invalid, the disciplinary proceeding shall resume. The Respondent may immediately be placed on interim suspension pending the final disposition of the matter.
- (c) **Proceedings to Determine Incapacity.** Bar Counsel shall investigate information relating to a Lawyer's physical or mental condition that adversely affects the Lawyer's ability to practice law and, where warranted, report that information to the Board of Commissioners.
- (1) **Petition.** The Board of Commissioners, upon reasonable cause, shall direct Bar Counsel to petition the Supreme Court to determine whether the Lawyer is unable to adequately practice law because of mental illness, senility, excessive use of alcohol or drugs, or other mental or physical incapacity.
 - (2) **Service.** A copy of the petition shall be served upon the Respondent by Bar Counsel concurrently with the filing of the petition.
 - (3) **Action by Supreme Court.** Upon receipt of the petition, the Supreme Court may take such action as it deems appropriate, including but not limited to:
 - (A) Reference of the matter to a person or committee for hearing and fact-finding pursuant to Rule 525(j);
 - (B) Provision for an examination of the Respondent, at the expense of the Bar, by such qualified medical experts as the Supreme Court, or any person or committee to which the matter has been referred, may designate; and/or
 - (C) Abatement, upon its own motion or the motion of either party, of any pending disciplinary proceedings against the Respondent.
- (d) **Notice of Transfer to Disability Inactive Status.** Bar Counsel shall give notice to the public of Respondent's transfer to disability status by:

- (1) causing a notice of the transfer to disability inactive status to be published in the official Bar publication and in a newspaper of general circulation in each judicial district in which the Respondent maintained an office for the practice of law; and
 - (2) transmitting (by electronic means or otherwise) a certified copy of the Supreme Court order transferring Respondent to disability inactive status to the administrative judge and trial court administrator of each judicial district in the State, to each district court judge and magistrate in the judicial district where the Respondent maintained an office for the practice of law, and to such other persons, entities or organizations as may be indicated to protect the interests of the public and the clients of the Respondent.
- (e) **Reinstatement from Disability Inactive Status.**
- (1) **Generally.** No Respondent transferred to disability inactive status may resume active status except by order of the Supreme Court.
 - (2) **Petition.** Any Respondent transferred to disability inactive status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the Supreme Court may direct.
 - (3) **Medical Examination.** Upon the filing of a petition for transfer to active status, the Supreme Court may take whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the Respondent by qualified medical experts designated by the Supreme Court. In its discretion, the Supreme Court may direct the expense of the examination be paid by the Respondent.
 - (4) **Waiver of Doctor-Patient Privilege.** With the filing of a petition for reinstatement to active status, the Respondent shall be required to disclose the name of each psychiatrist, psychologist, physician, and hospital or other institution or health care provider by whom or in which the Respondent has been examined or treated since the transfer to disability inactive status. The Respondent shall furnish to the Supreme Court written consent to the release of information and records relating to the disability if requested by the Supreme Court or the court-appointed medical experts.
 - (5) **Proof of Legal Competence.** The Supreme Court may also direct the Respondent to establish proof of legal competence, which proof may include certification by the Board of Commissioners of successful completion of the Idaho bar examination.
 - (6) **Granting Petition for Transfer to Active Status.** The Supreme Court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed.
 - (7) **Judicial Declaration of Competence.** If a Respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Supreme Court may dispense with further evidence that his or her disability has been removed and may immediately direct his or her reinstatement to active status upon terms as are deemed proper and advisable.
- (f) **Notice of Reinstatement.** Following entry of the Supreme Court's order reinstating the Respondent to active status, the Board of Commissioners shall:
- (1) cause a notice of reinstatement to active status to be published in the official Bar publication; and
 - (2) transmit promptly a certified copy of the order of reinstatement to active status to the presiding judge of the court of each judicial district in which the Respondent is

entitled to practice law in this State before his or her transfer to disability inactive status.

- (g) **Confidentiality.** The confidentiality of disability inactive records and proceedings shall be governed by Rule 521(d).

RULE 516. Duties after Limitations on the Right to Practice Law

- (a) **Duties.** Unless otherwise specified, a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, shall be effective upon date of entry. After the date of entry, the Respondent shall:
- (1) not accept any new retainer or engage as a Lawyer for another in any new case or legal matter of any nature;
 - (2) have 14 days after the effective date of the order limiting the right to practice law to wind up and complete on behalf of any client, all matters pending on the entry date;
 - (3) refund any part of any fees paid in advance that have not been earned;
 - (4) move for leave to withdraw, or to substitute counsel in any pending litigation, and notify opposing counsel and adverse parties of such withdrawal or substitution of counsel;
 - (5) not use any sign or advertise that he or she, either alone or with any other person, has, owns, conducts or maintains a law office or office of any kind for the practice of law, or that he or she is entitled to practice law, and he or she shall promptly remove any sign indicating same;
 - (6) not use any stationery, bank accounts or checks whereon his or her name appears as a Lawyer or attorney at law;
 - (7) promptly remove his or her listing from any telephone directory indicating he or she is a Lawyer or attorney or holds a similar title;
 - (8) promptly contact the publishers of Martindale-Hubbell law directory and any other listing in which his or her name appears and cause the removal of any listing that states he or she is a member of the Bar in good standing;
 - (9) comply with the provisions of Idaho Code section 30-1309, concerning membership and participation in professional service corporations;
 - (10) not practice law, not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency and not share in any fee for legal service performed by himself or herself;
 - (11) not maintain a presence or occupy an office where the practice of law is conducted; and
 - (12) comply with any other requirement of the Supreme Court.
- (b) **Failure to Comply.** Failure to comply with the provisions of this section may be grounds for a further Sanction, the imposition of a previously withheld Sanction, the denial of a petition to dissolve an interim suspension or the denial of a motion to reinstate.

RULE 517. Notice of Limitations on the Right to Practice Law

- (a) **Notice.** Notice of a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, shall be given or caused to be given by the Respondent or a person appointed by the Supreme Court to:
- (1) All clients being represented in pending matters;
 - (2) Any co-counsel in pending matters;
 - (3) Any opposing counsel in pending matters;
 - (4) All adverse parties in pending matters who are not represented by counsel; and
 - (5) Any other party and/or financial institution as may be necessary to protect the interests of clients or the public.

(b) **Contents of Notice.** The notice shall state:

- (1) The Respondent is disqualified to act as a Lawyer in this State by reason of the order;
 - (2) The effective date of the order;
 - (3) The Respondent's residence or other address where communications can be sent;
 - (4) The place of residence of the client, in the case of notice to co-counsel, counsel for adverse parties, or an adverse party;
 - (5) The right of the client, and any counsel presently representing the client, to obtain any papers or other property to which they are entitled; and
 - (6) The times and places at which the papers and other property may be obtained, calling attention to any urgency for obtaining the papers and other property.
- (c) **Service of Notice.** The notice required by this Rule shall be given by registered or certified mail, return receipt requested, as soon as practicable after the entry of the Supreme Court's order.
- (d) **Filing of Lawyer's Affidavit.** Within 14 days after the entry of a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, the Respondent must file with the Supreme Court and serve upon Bar Counsel an affidavit containing a statement that he or she has complied fully with the provisions of this Rule.
- (e) **Failure to Comply.** Failure to comply with the provisions of this section may be grounds for a further Sanction, the imposition of a previously withheld Sanction, the denial of a petition to dissolve an interim suspension or the denial of a motion to reinstate.
- (f) **Notice to Public.** Bar Counsel shall give notice to the public of a Respondent's interim suspension, suspension, disbarment, or resignation in lieu of disciplinary proceedings by promptly:
- (1) causing a notice of the Sanction to be published in the journal of the official Bar publication and in a newspaper of general circulation in each judicial district in which the Respondent maintained an office for the practice of law; and
 - (2) transmitting (by electronic means or otherwise) a certified copy of the Supreme Court order imposing a Sanction to the administrative judge and trial court administrator of each judicial district in the State, to each district court judge and magistrate in the judicial district where the Respondent maintained an office for the practice of law, and to such other persons, entities or organizations as may be indicated to protect the interests of the public and the clients of the affected Respondent.

RULE 518. Reinstatement after Suspension

- (a) **Reinstatement after Suspension of 90 Days or Less.** A lawyer who has been suspended for 90 days or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the Supreme Court and serving upon Bar Counsel an affidavit stating he or she has complied fully with the requirements of the suspension order and has paid any required fees and costs.
- (b) **Reinstatement after Suspension for More Than 90 Days.** A lawyer suspended for more than 90 days may be readmitted upon showing that he or she has the moral qualifications, competency and learning in the law for admission to practice law in this State, that his or her resumption of the practice of law within this State will not be detrimental to the integrity of the Bar, to the administration of justice or against the public interest, and that he or she has complied with all the terms of his or her suspension.
- (1) **Petition.** A petition for reinstatement by a suspended lawyer may be filed no sooner than 90 days prior to the end of his or her term of suspension. No petition for reinstatement under this Rule shall be filed within one year

following an adverse judgment upon a petition for reinstatement filed on behalf of the same lawyer.

- (2) **Place of Filing.** Petitions for reinstatement by a suspended lawyer shall be filed with the Clerk and served upon Bar Counsel.
- (3) **Advance Cost Deposit.** Such petitions shall be accompanied by an advance cost deposit in an amount of not less than \$1500 to cover anticipated costs of the reinstatement proceeding. If the costs of the proceeding are less than the deposit, any unused amounts shall be returned to the suspended lawyer at the conclusion of the proceedings. If the costs of the proceeding exceed the advance cost deposit, the suspended lawyer must reimburse such costs prior to reinstatement.
- (4) **Processing Petition.** Within 14 days following receipt of the petition, the Chair of the Professional Conduct Board shall assign the petition to a Hearing Committee.
- (A) **Hearing.** The Hearing Committee shall schedule a hearing to be held within a reasonable time after the matter is assigned. The Clerk shall serve a copy of the notice of hearing upon suspended lawyer and Bar Counsel at least 14 days in advance of the hearing, stating the date, time and place of hearing. The notice shall advise the suspended lawyer that he or she is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his or her own behalf.
- (B) **Burden of Proof.** The suspended lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met the requirements, as herein above set forth or as set forth in the Supreme Court order of suspension, for reinstatement to the practice of law in this State.
- (C) **Report of Hearing Committee.** The Hearing Committee shall file a report containing its findings of fact, conclusions of law and recommendations, together with the record, with the Clerk. A copy of the Hearing Committee's report shall be served on the suspended lawyer and Bar Counsel.
- (D) **Time of Decision.** The Hearing Committee's decision shall be rendered within 21 days after the matter is fully submitted.
- (E) **Submission to Court.** The Professional Conduct Board shall cause the Clerk to submit the entire record of the proceedings before the Hearing Committee to the Supreme Court and serve a copy thereof on the suspended lawyer and Bar Counsel.
- (F) **Procedure After Submission.** In all reinstatement proceedings, the suspended lawyer and/or Bar Counsel may appeal to the Supreme Court all Hearing Committee findings of fact, conclusions of law and recommendations.
- (1) **Appeal Filed.** Within 21 days following the filing in the Supreme Court of findings of fact, conclusions of law and recommendations, either party may file a Notice of Appeal with the Supreme Court. Such Notice of Appeal shall be a brief statement indicating the party intends to contest any or all of the findings of fact, conclusions of law and recommendations of the Hearing Committee. The Notice of Appeal shall be served on the other party. After the filing of the record and the Notice of Appeal with the Supreme Court, the parties shall file briefs on the schedule to be provided by the Supreme Court. Oral argument, if desired by the Supreme Court,

shall be at a time and place scheduled by the Supreme Court

- (2) **No Appeal Filed.** If no appeal is filed with the Supreme Court within 21 days following the filings in the Supreme Court of the findings of fact, conclusions of law and recommendations, the Supreme Court may enter its decision or order further proceedings. The Supreme Court may modify the Hearing Committee's recommendations upon notice and opportunity to be heard. The Supreme Court may also remand a case to the Hearing Committee for further consideration.

(G) Order of Court

- (1) **Adverse Determination.** If the suspended lawyer is determined by the Supreme Court to be not fit to resume the practice of law, the petition shall be denied.
- (2) **Reinstatement.** If, however, suspended lawyer is found to be fit to resume the practice of law, the order of the Supreme Court may provide for reinstatement upon such conditions as the Supreme Court deems appropriate in the interest of justice, the public, the suspended lawyer, the Bar and/or former or prospective clients of the suspended lawyer. Conditions on reinstatement may include, but need not be limited to, payment of the costs and expenses of the proceedings had in the case; restitution to parties harmed by the suspended lawyer's misconduct that constituted grounds for the suspension in his or her case; and/or the suspended lawyer's furnishing to the Supreme Court such proof of competency as it may require, which proof may include certification by the Board of Commissioners that the suspended lawyer, subsequent to the date of such conditional order of reinstatement, has completed successfully the Idaho bar examination.
- (c) **Reinstatement after Vacation or Reversal of Criminal Conviction.** If an appeals court vacates or reverses a lawyer's Conviction of a Serious Crime or if a trial court enters an order granting a motion for a new trial, a motion for judgment of acquittal or a motion to withdraw a plea of guilty that removes a lawyer's Conviction of a Serious Crime, which Conviction was a basis for suspension under these Rules, the lawyer may file a petition for reinstatement following the procedures set forth in Rule 512(d).
- (d) **Reinstatement or Readmission after Reciprocal Reinstatement or Readmission.** Where the Supreme Court has imposed a suspension or disbarment solely on the basis of imposition of discipline in another jurisdiction, and where the suspended lawyer gives notice to the Supreme Court that he or she has been reinstated or readmitted in the other jurisdiction, the Supreme Court shall determine whether the suspended lawyer should be reinstated or readmitted. Unless Bar Counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the Supreme Court shall reinstate or readmit a suspended lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred.

RULE 519. Protection of Clients' Interests

- (a) **Order of Appointment.** If a Respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 517, and no partner, executor or other

responsible party capable of conducting the Respondent's affairs is known to exist, the administrative judge in the judicial district in which the Respondent maintained a practice (the administrative judge), upon proper proof of the fact, shall enter an order or appointment. Such order may include the appointment of a Lawyer or Lawyers (appointee(s)) to inventory the files of the Respondent, an injunction prohibiting all financial institutions holding all trust and operating accounts of the Respondent from disbursing monies on the signature of the Respondent or at his or her direction, and direction to take such action as seems indicated to protect the interests of the Respondent and his or her clients.

- (b) **Nondisclosure of Client Information.** No appointee shall be permitted to disclose any information contained in any files except as permitted by Idaho Rule of Professional Conduct 1.6. The attorney-client privilege and Idaho Rule of Professional Conduct 1.6 confidentiality protection shall be extended so that review of the file by the appointee(s) is not deemed to be disclosure to a third party.
- (c) **Powers and Duties of Appointee(s).** After obtaining access to and custody of the Respondent's files, the appointee(s) shall:
- (1) Notify each client of his or her right to obtain any papers or other property to which he or she is entitled and the times and places at which the papers or other property may be obtained, calling attention to any urgency for action on the client's part;
 - (2) Release to each client, upon request and the signing of proper releases, the papers and other property to which he or she is entitled;
 - (3) Place fee-generating work with other Lawyers consistent with Rule 519(g); and
 - (4) Within 90 days after appointment, file a final report with the Supreme Court, the administrative judge and Bar Counsel, including a request for release from the order of appointment and for disposition of any and all files that remain in the control and custody of such appointee(s).
- (d) **Trust and Operating Accounts.** The Bar Counsel or the appointee(s) shall serve a copy of the order of appointment on all financial institutions holding the trust and operating accounts of the Respondent, including all accounts on which the Respondent is principal or trustee. Service of the order of appointment on a financial institution shall permit the appointee(s) to substitute his or her authority for that held previously by the Respondent in all respects with regard to such accounts.
- (e) **Duty of Lawyers.** It shall be the duty of all licensed Lawyers to share cooperatively in the provision of services under this Rule and, when necessary, to do so without remuneration, though it shall not be their duty to bear expenses or costs incident to such services.
- (f) **Compensation of Appointee(s).** Any costs incurred by the appointee(s) for work done under this Rule shall be paid from fees owing to the Respondent or by the Bar. This Rule shall not be construed to limit or preclude the administrative judge from allowing reasonable fees in proper cases for work done under this Rule, which fees may be accepted without waiver of or prejudice to the qualified immunity provided in Rule 520(c), so long as the fees are not privately negotiated.
- (g) **Referral of Fee-Generating Work.** In administering this Rule, it is intended that as a general rule, fee-generating work that can be placed by the appointee(s) with private practitioners for handling under reasonable and customary arrangements for remuneration will be so placed and will not be retained by the appointee(s), and all exceptions thereto shall be approved by the administrative judge. This Rule shall not be applied to force representation upon any objecting client.

RULE 520. Immunity

- (a) **Grievants - Witnesses.** Grievances, complaints, testimony and other presentation or arguments submitted to the Professional Conduct Board, a Hearing Committee, any member of the Professional Conduct Board or of any Hearing Committee, or Bar Counsel, all proceedings and conduct maintained or engaged in under these Rules, and all testimony and showings with respect to any such matters shall be absolutely privileged, and no civil litigation predicated thereon may be instituted or maintained.
- (b) **Disciplinary Authorities.** Members of the Professional Conduct Board, members of the Hearing Committees, Bar Counsel, members of the Board of Commissioners, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.
- (c) **Appointees.** Any appointee under these Rules shall be immune from civil liability for acts and omissions in the performance of his or her duties, except for demonstrated fraudulent or malicious conduct, so long as the appointee is acting
 - (1) Pursuant to any order made under or pursuant to these Rules;
 - (2) Pursuant to any like or similar order directing or providing for legal assistance to clients or persons adversely affected by the Respondent; or
 - (3) Pursuant to any written direction by Bar Counsel to act in the public interest or for the protection of any member of the public.

RULE 521. Access To Information

- (a) **Availability of Information.** All proceedings and records relating to Professional Conduct, except the work product of Bar Counsel, a Hearing Committee or the Professional Conduct Board, shall be available to the public after the filing and service of Formal Charges, unless the Grievant or Respondent obtains a protective order for specific testimony, documents or records.
- (b) **Confidentiality.** Prior to the filing and service of Formal Charges, a Professional Conduct matter is confidential, except that the pendency, subject and status of a Professional Conduct matter may be disclosed by Bar Counsel if:
 - (1) the Lawyer has waived confidentiality in writing;
 - (2) the matter is based upon allegations that include either the conviction of a crime or public reciprocal discipline;
 - (3) the matter is based upon allegations that have become generally known to the public; or
 - (4) there is a need to notify another person or organization, including the Client Assistance Fund, in order to protect the public, the administration of justice, or the legal profession.
- (c) **Public Hearings.** After the filing and service of Formal Charges or a petition for reinstatement, the hearing of a Professional Conduct matter is public, except for:
 - (1) deliberations of a Hearing Committee, Professional Conduct Board, or Court; or
 - (2) aspects of the hearing with respect to which a protective order is pending or issued.
- (d) **Disability Inactive Proceedings.** Except as otherwise permitted by Rule 515, all proceedings and records relating to any transfer to or from disability inactive status are confidential. All orders transferring a Lawyer to or from disability inactive status are public.
- (e) **Protective Orders.** In order to protect the interests of a Grievant, witness, third party, Lawyer or Respondent, the Hearing Committee to which a matter is assigned, or Chair of the Professional Conduct Board if the matter has yet to be assigned to a Hearing Committee, may, upon application of any person and for good cause shown, issue a protective order. The protective order shall prohibit the disclosure of specific

information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

- (f) **Request for Nonpublic Information Relating to Discipline.** A request for nonpublic information other than that authorized for disclosure under subsection (b) above shall be denied unless the request is from one of the following agencies:
 - (1) an agency authorized to investigate qualifications for admission to practice law;
 - (2) a lawyer disciplinary enforcement agency;
 - (3) an agency authorized to investigate qualifications for government employment; and
 - (4) any other agency designated by the Supreme Court.
- (g) **Disclosure with Notice to Lawyer.** Except as provided in subsection (h), if Bar Counsel decides to provide nonpublic information to a requesting agency, and if the Lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the Lawyer shall be notified in writing at his or her last known address of the information that has been requested and the agency making the request, together with a copy of the information proposed to be released. The notice shall advise the Lawyer that the information shall be released at the end of 14 days following mailing of the notice unless the Lawyer objects to the disclosure. If the Lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.
- (h) **Disclosure Without Notice to Lawyer.** If an authorized requesting agency has not obtained a waiver from the Lawyer to obtain nonpublic information and requests that the information be released without giving notice to the Lawyer, the requesting agency shall certify, in writing, to the satisfaction of Bar Counsel that:
 - (1) the request is made in furtherance of an ongoing investigation into misconduct by the Lawyer;
 - (2) the information is essential to that investigation; and
 - (3) disclosure of the existence of the investigation to the Lawyer would seriously prejudice that investigation.
- (i) **Notice to National Discipline Data Bank.** Bar Counsel shall transmit notice of all public discipline imposed against a Lawyer, transfers to or from disability inactive status, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.
- (j) **Scope of Duty.** All parties and witnesses in the process, together with all officials and employees of the agency authorized to receive information under these Rules, shall conduct themselves so as to maintain the confidentiality mandated by this Rule.
- (k) **Order by Supreme Court to Make Public.** Notwithstanding any other provisions of these Rules, the Supreme Court may provide by order that review of Professional Conduct proceedings and/or records in a particular case, in all cases or in any class or group of cases, are open to the public, subject to special or protective orders of the Supreme Court. Bar Counsel and any other member of the Bar or the public shall have standing to petition the Supreme Court for a determination leading to the waiver of confidentiality in such proceedings and/or records in particular cases, and the Supreme Court may grant or deny such petitions in whole or in part as, in its discretion and in the interests of justice, it deems proper.

RULE 522. Retention of Disciplinary Records

- (a) **Records Retention – Bar Counsel.** Except as otherwise provided in this Rule, Bar Counsel may permanently maintain all records related to any disciplinary process or matter.

- (b) **Records of Terminated Grievances.** Bar Counsel shall destroy all records or other evidence related to a grievance terminated under Rule 509(b)(1) after five years have elapsed from the date of termination; however, Bar Counsel may maintain a docket showing the names of the Grievant and Respondent and the date of the termination. After a file has been destroyed, any response to an inquiry requiring a reference to the matter shall state there is no record of the matter. A Lawyer may answer any inquiry requiring a reference to a destroyed matter by stating that no grievance was filed.
- (c) **Records Retention – Professional Conduct Board.** Professional Conduct Board members shall destroy all records in their possession related to any disciplinary process or matter upon conclusion of such process or matter, including any appeals or remands.

RULE 523. Service and Filing of Pleadings

- (a) **Form of Pleadings.** The form, style and content of all pleadings shall conform to the provisions of Rule 10 of the Idaho Rules of Civil Procedure.
- (b) **Signing of Pleadings.** The provisions of Rule 11 of the Idaho Rules of Civil Procedure are incorporated into these Rules.
- (c) **Complaints and Petitions.** Service of complaints and petitions under these Rules shall be made by personal service under Idaho Rules of Civil Procedure 4(d)(1) and 4(d)(2) or by certified mail, return receipt requested, to the Lawyer's address, as filed with the Bar. If service cannot be made as above, service shall be made in the official Bar publication and shall be deemed complete 14 days after the date the official Bar publication is mailed to Lawyers.
- (d) **Answers, Responses and Other Pleadings.** Original answers, responses and other pleadings under these Rules shall be filed with the Clerk by personal delivery or mail. The Clerk's address is 525 W. Jefferson, Boise, Idaho 83702. Copies of original pleadings shall be served upon all parties by personal delivery, mail or electronic means.
- (e) **Service.** Whenever notice is required in these Rules, the Clerk shall promptly serve such notice by regular first class mail. Service shall be complete upon mailing.

RULE 524. Subpoena Power and Witnesses

- (a) **Investigatory Subpoenas.** Before Formal Charges have been filed, Bar Counsel may compel by subpoena the attendance of witnesses, and the production of pertinent books, papers and documents, in accordance with Idaho Rule of Civil Procedure 45. Subpoenas issued by Bar Counsel during the course of an investigation shall clearly indicate on their face that they are issued in conjunction with a confidential investigation under these Rules and that it is regarded as contempt of court or grounds for discipline to breach confidentiality. Consultation with an attorney is not considered such a breach.
- (b) **Subpoenas for Deposition or Hearing.** After Formal Charges are filed, Bar Counsel or Respondent may, in accordance with Idaho Rule of Civil Procedure 45, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents at a deposition or hearing under these Rules. All subpoenas shall be issued in the name of the Professional Conduct Board.
- (c) **Enforcement of Subpoenas.** The District Court of the judicial district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.
- (d) **Quashing Subpoena.** Any attack on the validity of a subpoena so issued shall be heard and determined by the chair of the Hearing Committee before which the matter is pending or by the court wherein enforcement of the subpoena is being sought. Any

resulting order is not appealable before entry of a final order in the proceeding.

- (e) **Witnesses and Fees.** The subpoena process, witness fees and mileage fees shall be the same as those provided for proceedings in the district courts of the State.
- (f) **Subpoena Pursuant to Law of Another Jurisdiction.** Whenever a subpoena is sought in this State pursuant to the law of another jurisdiction for use in Lawyer disciplinary or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the chair of the Professional Conduct Board, upon petition for good cause, may issue a subpoena as provided in this Rule to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement or challenges to this subpoena shall be as provided in these Rules.

RULE 525. Additional Rules of Procedure

- (a) **Nature of Proceedings.** Disciplinary proceedings are neither civil nor criminal but are sui generis.
- (b) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the provisions of the Idaho Rules of Civil Procedure shall not apply in disciplinary cases. Hearing Committee chairs shall have the discretion to allow dispositive motions that would expedite resolution of any disciplinary matter.
- (c) **Rules of Evidence.** The rules of evidence, generally applicable in civil actions in the District Courts of this State, shall apply during the proceedings under these Rules; except as may be otherwise provided by these Rules.
- (d) **Burden of Proof.** Bar Counsel shall have the burden of proof in proceedings seeking discipline or transfer to disability inactive status. The Respondent shall have the burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status. In any show cause proceeding under these Rules, the burden of proof shall be on the party required to show cause.
- (e) **Standard of Proof.** Any issue of fact shall be proved by clear and convincing evidence.
- (f) **Record Availability.** All proceedings of the Professional Conduct Board or of a Hearing Committee that are not reported by a court reporter, will be recorded. A court reporter shall report all evidentiary proceedings, together with any Formal Charge proceedings for which the Hearing Committee chair requests reporting. Any recording or transcript of any proceeding is available to the parties, but is only available to others subject to the provisions of Rule 521. Upon written request to the Clerk and with prior payment arrangements, the Clerk will make arrangements to have the court reporter's transcript or a transcription of any recording delivered to the requesting party. The Clerk may require the requesting party to make arrangements to order and pay for transcripts directly with the court reporter.
- (g) **Stay or Abatement.** Pending criminal or civil actions with substantial similarity to the material allegations of the alleged grounds for the imposition of Sanctions shall not stay the filing nor abate the processing of a review of a Lawyer's Professional Conduct under these Rules. Bar Counsel or the Professional Conduct Board may, in their discretion, permit such stay or abatement.
- (h) **Delay.** The unwillingness or neglect of the Grievant to file a complaint or a settlement between the Grievant and the Lawyer, shall not, in themselves, justify abatement of the processing of any grievance. The time between the commission of the alleged misconduct and the filing of the grievance predicated thereon may be pertinent to whether and to what extent a Sanction should

be imposed, but does not limit Bar Counsel's power to investigate and prosecute.

- (i) **Time Requirements.** Except as is otherwise provided in these Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.
- (j) **References.** When the Supreme Court has occasion to make a finding of fact in proceedings under or in connection with these Rules, it may refer the matter to a special fact-finding committee or referee specially appointed for that purpose or may authorize the Professional Conduct Board or any Hearing Committee to so serve.
- (k) **Discovery.**
 - (1) **When permitted.** Discovery shall be permitted and governed as provided by the Idaho Rules of Civil Procedure.
 - (2) **Non-filing of Discovery.** Discovery shall not be filed with the Clerk, but shall be served upon all parties as provided in Rule 523(d).
 - (3) **Disputes.** Disputes concerning the scope and other aspects of discovery shall be determined by the chair of the Hearing Committee before which the matter is pending. All discovery orders by the Hearing Committee are interlocutory and may not be appealed before the entry of the final order.
- (l) **Pre-Hearing Conference.** Hearing Committees may order such pre-hearing conferences as they deem necessary for the orderly conduct of any disciplinary proceeding.
- (m) **Judicial Notice.** A Hearing Committee may take judicial notice of facts entitled to such notice; provided, however that the facts judicially noticed shall be specified by the Hearing Committee either at the time of the hearing or at the time of declaring its findings of facts, whichever it deems appropriate.
- (n) **Oaths and Affirmations.** Any member of the Professional Conduct Board, any Lawyer member of a Hearing Committee in matters pending before it, and Bar Counsel in matters under investigation or prosecution by him or her may administer oaths and affirmations.
- (o) **Statute of Limitations.** Proceedings under these Rules shall be exempt from all statutes of limitations.

SECTION VI

*Client Assistance Fund

**(Fund name changed throughout Section VI on 12-5-02)*

RULE 600. Establishment of Fund

- (a) **Purpose.** There is established, as provided in *Idaho Code* Sec. 3-409, the Client Assistance Fund of the Idaho State Bar for the purposes of maintaining the integrity and protecting the good name of the legal profession by reimbursing claimants for losses caused by the dishonest conduct of a lawyer.
- (b) **Effective Date.** These Rules shall be effective for claims filed with the Board after July 1, 1986. The Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto; provided, however, that any claims pending on the effective date of this Rule shall be processed under the prior Rules.

RULE 601. Definitions. As used in the Rules relating to the Client Assistance Fund, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.
- (b) **Claim.** "Claim" means a written application to the Board of Commissioners seeking reimbursement from the Client Assistance Fund of a loss resulting from a lawyer's dishonest conduct.
- (c) **Claimant.** "Claimant" means an individual, or in the event of his or her death or incapacity, his or her duly appointed personal representative or spouse, who or entity which has sustained a loss as a result of a lawyer's dishonest conduct and has filed a claim as defined in subsection (b) of this Rule.
- (d) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- *(e) **Dishonest Conduct.** "Dishonest Conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:
 - (1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Idaho Rules of Professional Conduct; or
 - (2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

**(Section (e) added 4-1-91)*

- (f) **Executive Director or Director.** "Executive Director" or "Director" means the chief administrative officer of the Idaho State Bar.
- (g) **Fund.** "Fund" means the Client Assistance Fund.
- (h) **Lawyer.** "Lawyer" means a person who has met the qualifications for and been duly admitted to the practice of law in the State of Idaho and is actively engaged in the practice of law within this state.
- (i) **Loss.** "Loss" means the loss of money or property occasioned by the dishonest conduct of a lawyer occurring during the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.
- (j) **Rules or These Rules.** "Rules" or "These Rules" means Rules 600 through 616 governing the Client Assistance Fund.

***RULE 602. Appropriation to and Maintenance of Fund.** The Board of Commissioners shall provide funding

necessary for the proper payment of claims and the costs of administration of the Fund from an assessment on the members of the Idaho State Bar; from donations made to the Fund; through accrual of interest on such monies as are held in the Fund; and, if deemed feasible by the Board, through the purchase of insurance.

*(a) **Assessment.** Each fiscal year following establishment of the Fund, the Board shall assess an amount not to exceed \$20.00 per member, regardless of category of membership, to reimburse the Fund for any claims paid during the prior fiscal year, or until the Fund reaches a total amount of \$500,000.00. In the event such assessment does not fully reimburse the Fund, the Board shall continue to assess each year an amount not to exceed \$20.00 per member until the Fund reaches a total sum of \$500,000.00.

*(b) **Investment.** All monies or other assets collected for the Fund shall be held in a separate account in the name of the Fund, subject to the written direction of the Board; provided, however, the Board may prudently invest such portions of the funds as may not be needed currently to pay losses.

- (1) **Accrued Interest.** Interest accrued or accruing on the monies held in the Fund may be maintained in the Fund, although the total amount of the Fund exceeds \$500,000.00.

**(Sections (a) & (b) amended 4-1-91 and 2-7-97)*

(c) **Insurance.** Insurance to cover extraordinary losses in excess of the assets of the Fund may be purchased by the Board, if the same is deemed prudent and feasible by the Board.

**(Rule 602 amended 1-1-90)*

RULE 603. Committee on Client Assistance Fund

*(a) **Establishment and Membership.** The Board of Commissioners shall appoint a five (5) member committee to be known as the "Client Assistance Fund Committee" which shall consist of members of the Idaho State Bar, in good standing, and non-lawyer members.

- (1) **Terms of Office.** Members of the Committee shall serve for terms of three (3) years provided that initial appointments shall be made as follows:

(A) One (1) member of the Idaho State Bar, in good standing, and one (1) adult Idaho citizen who is a person of good moral character and reputation who is not a lawyer, appointed for an initial term ending June 30, 1987.

(B) One (1) member of the Idaho State Bar, in good standing, and one (1) adult Idaho citizen who is a person of good moral character and reputation who is not a lawyer, appointed for an initial term ending June 30, 1988.

(C) One (1) member of the Idaho State Bar, in good standing, appointed for an initial term ending June 30, 1989.

- (2) **Subsequent Terms.** Subsequent terms of all members shall be for three (3) years. The composition of the Committee shall be maintained by the appointment of three (3) lawyers and two (2) nonlawyers of like credentials as those appointed to initial membership on the Committee.

- (3) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as vice-chairman. The Chairman shall be responsible for calling and presiding over meetings of the Committee.

- (4) **Duties and Responsibilities.** The Committee shall have the following duties and responsibilities:
 - (A) To receive and evaluate claims;
 - (B) To conduct hearings on claims;
 - (C) To submit findings and recommendations, together with the record of the hearing, to the Board of Commissioners;
 - (D) To adopt additional rules of procedure not inconsistent with these Rules, subject to approval by the Board of Commissioners;
 - (E) To provide a full report at least annually to the Board of Commissioners and make other reports and publicize its activities as the Committee may deem advisable; and
 - (F) To prosecute claims for restitution to which the Fund is entitled.
- (5) **Meetings.** The Committee shall meet no less than once per year upon call of the Chairperson provided that the Chairperson shall call a meeting at any reasonable time at the request of at least two (2) members of the Committee.
- (6) **Quorum.** Three (3) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.
- (7) **Compensation and Expenses.** The members of the Client Assistance Fund Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
- (8) **Vacancies.** Vacancies during a term shall be filled by the board for the remainder of the unexpired term. The Board may also appoint temporary members to serve during the absence or recusal of permanent members of the committee.
- (9) **Conflict of Interest.** A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

**(Section (a) amended 4-13-94 - effective 7-1-94)*

RULE 604. Recognition of Claims

- (a) **Claim.** The claimant shall file or cause to be filed a claim for reimbursement and contains the following information:
 - (1) The name and address of the lawyer causing the loss;
 - (2) The amount of the loss claimed;
 - (3) The date of the loss or period of time during which the alleged loss occurred;
 - (4) Name and address of the claimant; and
 - (5) A general statement of facts relative to the claim.
- (b) **Form.** The claim shall be verified, submitted upon a form prepared by the Board of Commissioners, and shall have endorsed upon its face in bold type the following statement: "In establishing the Client Assistance Fund, the Idaho State Bar did not create, nor acknowledge, any legal responsibility for the acts of individual lawyers in their practice of law. All reimbursements of losses from the Client Assistance Fund shall be a matter of grace resting in the sole discretion of the Board of Commissioners of the Idaho State Bar administering the Fund and not as a matter of right. No client or member of the public shall have any right in the Client Assistance Fund as a third-party beneficiary or otherwise unless an award thereof shall have been made by the order of the Board of Commissioners of the Idaho State Bar."
- (c) **Time of Filing.** The claim shall be filed no later than three (3) years after the claimant knew or should have known of the dishonest conduct of the lawyer.

- (d) **Place of Filing.** The claim shall be filed with the Executive Director of the Idaho State Bar who shall promptly refer the claim to the Chairman of the Client Assistance Fund Committee.
- (e) **Losses not Reimbursable.** The following losses shall not be reimbursable:
 - (1) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;
 - (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby; including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
 - (3) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract.
- (f) **Special Circumstances.** In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

RULE 605. Processing Claims

- (a) **Evaluation of Claim.** All claims shall be evaluated by or under the authority and direction of the Client Assistance Fund Committee, which may:
 - (1) disregard the matter for failure to properly file or to state a recognizable claim under these Rules; or
 - (2) initiate an investigation of the claim.
- (b) **Investigation of Claim.** In the event the Committee initiates an investigation of the claim, it shall notify the lawyer against whom claim is made of the claim and request from the Professional Conduct Board a report of its investigation, if any, of the lawyer's conduct.
 - (1) **Lawyer Response.** The lawyer shall have twenty-one (21) days from the date the claim is served upon him or her to file a written, verified response to the claim.
 - (2) **Report of Professional Conduct Board.** The Board shall provide, or cause to be provided, a report to the Committee:
 - (A) forwarding the files containing the results of its investigation, if any, and the final disposition of the matter before the Board;
 - (B) advising that no investigation has been, or will be undertaken.
 - (3) **Time for Filing Report.** The report of the Professional Conduct Board shall be filed with the Chairman of the Committee within sixty (60) days following receipt of the request.
 - (4) **Failure to Timely File Report.** If the Professional Conduct Board fails timely to file the requested report or reports that there has been, and will be no investigation, the Committee may proceed with such investigation as it deems appropriate to determine the matter before it.
- (c) **Hearing.** In the event the claim is scheduled for hearing, the hearing shall be conducted in the manner usual to the District Courts of the State of Idaho and may be continued from time to time as the Committee, in its discretion, may permit.
 - (1) **Place of Hearing.** The lawyer has the right to have the hearing held in the county of his or her residence provided he or she has requested the same in his or her response to the claim; otherwise, the hearing shall be at the place designated by the Chairman of the Client Assistance Fund Committee.
 - (2) **Notice.** The Chairman shall give, or cause to be given, notice to the claimant and lawyer stating the date, time and place of the hearing. The notice shall also advise the parties of their right to be represented by counsel, to present documents and witnesses on their own behalf, and to

cross-examine the witnesses presented by the opposing party.

(d) **Decision.**

- (1) **Notice of Dismissal.** In the event the Committee determines that the claim is not in proper form or fails to state an essential element to state a claim or, from its preliminary investigation it is clear that the Fund is inapplicable, it shall notify the claimant of its decision, stating the reasons for the action taken.
 - (A) **Request for Review.** The claimant may request, in writing, a review of the Committee's determination, stating the reasons for the request.
 - (B) **Time of Filing.** The request for reconsideration shall be filed within fourteen (14) days following the receipt by the claimant of notice under this Rule.
 - (C) **Service of Request.** The written request shall be served upon the Chairman of the Committee and the affected lawyer as provided in Rule 614.
 - (D) **Failure to Timely Request.** If the claimant fails to make a request or the request is denied, the decision of the Committee is final.
- (2) **Recommendations of Committee.** The Committee shall file a report, containing its findings and recommendations, together with the record of its proceedings and any briefs submitted by the parties, with the Board of Commissioners. The Recommendations may include dismissal of the claim or allowance, in whole or in part, of the claim.
 - (A) **Finding Dishonest Conduct - Effect.** The Committee, for good cause, may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.
 - (B) **Manner and Order of Payment.** A recommendation that the claim or claims be allowed shall include a determination of the manner and order of payment.
 - (C) **Time for Filing.** The Committee's report shall be filed with the Board within twenty-one (21) days following conclusion of the hearing.
 - (D) **Service of Report.** The Chairman of the Committee shall serve, or cause to be served, a copy of the report upon the Board of Commissioners, claimant and the lawyer as provided in Rule 614.
- (3) **Exceptions.** Either the claimant or the lawyer may file exceptions to the findings and recommendations of the Committee with the Executive Director, who shall forward the entire record of the proceedings before the Committee, together with its findings and recommendations and the exceptions, if any, to the Board of Commissioners.
 - (A) **Time for Filing.** Exceptions, if any, shall be filed by the parties within fourteen (14) days following service of the Committee's findings and recommendations.
- (4) **Review by Board.** Review of the matter shall be on the record unless the Board, in its discretion, determines the appearance of the parties, briefing, or oral argument before the Board is required. In the event the Board so determines, the Chairman shall set the date for the appearance, briefing or oral argument and direct the Executive Director to serve a notice of the date, time and place for appearing or filing on the parties.
- (5) **Board Decision.** Following its review, the Board shall make final findings and recommendations which shall:
 - (A) affirm the Committee's report;
 - (B) reject the Committee's report;
 - (C) modify the Committee's report;
 - (D) remand the matter to the Committee for further investigation or hearing.

(6) **Notice of Board's Decision.**

- (A) **Filing and Service.** The Board shall file its Findings and Recommendations with the Executive Director and cause the Director to serve copies of its final findings and recommendations on the parties.
 - (B) **Time for Filing.** The Board's decision shall be filed within twenty-eight (28) days following conclusion of its review.
- * (7) **Review by Court.** Either party to the proceeding may file exceptions to the findings and recommendations of the Board.
 - (A) **Time for Filing.** The request for review and any exceptions shall be filed within fourteen (14) days following service of the Board's decision upon the parties.
 - (B) **Place for Filing.** The request for review and any exceptions shall be filed with the Clerk of the Supreme Court.
- * (8) **Review by Court.** After the filing of the record and exceptions, if any, with the Supreme Court, the proceedings shall be in accordance with the following procedures:
 - (A) **No Exceptions.** In the event no exceptions to the findings and recommendations of the Board are filed, the Supreme Court shall promptly enter an appropriate order unless the Court, in its discretion, determines that submission of briefs and oral argument are required, in which event the Court shall notify the parties of the dates and times for submission of briefs and the date of oral argument.
 - (B) **Exceptions.** In the event exceptions to the findings and recommendations of the Board are filed, the party seeking review shall file an opening brief with the Clerk of the Supreme Court within twenty-eight (28) days following the date the exceptions were filed with the Court. A responding brief shall be filed within twenty-one (21) days after the service of the opening brief. Any reply brief shall be filed within fourteen (14) days after service of the responding brief. Oral argument, if desired by the Supreme Court, shall be at a time and place scheduled by the Court. Following the conclusion of oral argument, the Court shall promptly enter an appropriate order.
- *(Sections (d)(7) & (8) amended 9-19-96)*
- * (9) **Effect of Award.** In the event the Supreme Court enters an order approving an award, such order shall constitute a judgment against the subject lawyer(s), enforceable as provided by law, unless the Court order states otherwise.
- *(Section (d)(9) added 9-19-96)*

***RULE 606. Limitations on Amount of Reimbursement.**

The maximum amount which any one claimant may recover from the Fund arising from an instance or course of dishonest conduct by the lawyer is \$15,000.00.

**(Rule 606 amended 4-1-91)*

RULE 607. Method of Payment

- * (a) **Assignment by Claimant.** If a claim is allowed, in whole or in part, and prior to payment of the claim, the claimant shall be required to execute a written assignment to the Fund of all rights of the claimant against the lawyer, or his or her estate, to the extent of the reimbursement authorized by the Board.
- (1) The assignment shall specifically state that the Fund shall have no right to receive anything from the lawyer or his or her estate until the Claimant has been reimbursed the full

amount of the claim allowed by the Board on account of the lawyer's dishonest act.

*(Section (a) amended 4-1-91)

- (b) **Prompt Payment.** Upon receipt of the written assignment referred to in subsection (a) of this Rule, the Board shall promptly pay to the claimant the amount determined reimbursable under these Rules.

RULE 608. Subrogation

- (a) **Subrogation Rights.** In the event the Board authorizes payment in whole or in part of a claim, the Client Assistance Fund shall be subrogated to the amount of any such payment and may recover the same either by a suit against the lawyer or in the event of his or her death, insolvency, or disability, against his or her personal representative or other persons administering his or her estate.
- (1) **Action by Fund.** The Client Assistance Fund Committee may bring such action as is deemed advisable against the lawyer, or the lawyer's estate and shall advise the claimant of its action. The claimant may then join in such action to recover losses in excess of the amount of the reimbursement from the Fund.
- (2) **Action by Claimant.** Should the claimant bring an action directly against the lawyer or the lawyer's estate for recovery of losses not reimbursed by the Fund, he or she shall promptly notify the Committee of the filing of such action.
- (3) **Cooperation.** The claimant is expected to cooperate in any effort the Committee undertakes to achieve reimbursement for the Fund.

RULE 609. Legal Rights to Payment from Fund.

No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

RULE 610. Immunity. Members of the Board, Client Assistance Fund Committee, the Executive Director and their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.

RULE 611. Confidentiality.

- *(a) **Claims and Proceedings.** All claims, proceedings and reports involving claims for reimbursement shall be kept confidential until and unless the Committee authorizes reimbursement to the Claimant.
- *(b) The Committee, in its sound discretion, may seal all or part of the record of a claim to protect the claimant's privacy.
- *(Sections (a) & (b) amended 4-1-91)
- (c) **Authorized Disclosure.** This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Committee shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.
- (d) **Notice to Parties.** Both the claimant and the lawyer shall be advised of the status of the Committee's consideration of the claim and shall be informed of the final determination.

RULE 612. Compensation for Representing Claimants. Except as approved by this Committee, no lawyer shall charge for or accept compensation for prosecuting a claim on behalf of a claimant.

RULE 613. Additional Rules of Procedure.

- (a) **Record Availability.** The record of a hearing shall be made available to the parties, at their expense, on written request made to the Executive Director of the Idaho State Bar. The record shall not be made available to the public unless the provisions of Rule 611 of these Rules is determined not to apply.
- (b) **Time Requirements.** Except as is otherwise provided in these Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.
- (c) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the provisions of the *Idaho Rules of Civil Procedure* shall not apply in matter relating to the Client Assistance Fund.
- *(d) **Evidence.** A certified copy of a lawyer discipline order or a criminal conviction shall be deemed conclusive evidence that the lawyer committed the underlying conduct.
- *(Section (d) amended 4-1-91)
- (e) **Standard of Proof.** Any issue of fact shall be proved by a preponderance of the evidence.

RULE 614. Service

- *(a) **Claims and Petitions.** Service of claims and petitions under these Rules shall be made by certified mail, return receipt requested, to the lawyer's address as filed with the Idaho State Bar. In the event service cannot be made upon a lawyer, either because the address on file with the Idaho State Bar is no longer effective or because the lawyer fails or refuses to accept delivery of mail at that address, service will be deemed complete fourteen (14) days after reasonable notice by publication in *The Advocate*.
- *(Section (a) amended 3-31-00)
- (b) **Answers, Responses and Other Papers.** Service of answers and responses and other papers under these Rules shall be made in conformance with Rule 5(a), (b) and (f) of the *Idaho Rules of Civil Procedure*.
- (c) **Number of Copies.** All pleadings and papers to be filed or served consist of an original and six (6) copies.

RULE 615. Subpoena Power, Witnesses, Pre-trial Procedures

- (a) **Subpoena.**
- (1) **Power to Issue.** Pursuant to the authority of Title 3, Chapter 4, *Idaho Code* the power to issue subpoenas, for the purposes stated in Rule 45 of the *Idaho Rules of Civil Procedure*, in proceedings under these Rules under the circumstances specified, is granted as follows to any member of the Board of Commissioners and any member of the Client Assistance Fund Committee.
- (2) **No Blank Subpoenas.** No subpoena issued under this Rule shall be issued in blank. Each person authorized to issue subpoenas shall notify the Chairman of the Client Assistance Fund Committee of each subpoena issued and cause a copy of such subpoena issue to be inserted in the record.
- (3) **Issue in Name of Board.** All subpoenas shall be issued in the name of the Board of Commissioners of the Idaho State Bar.
- (4) **Issuance on Behalf of the Parties.** Either party may have subpoenas issued on their behalf, upon reasonable and timely request filed with the Executive Director of the Idaho State Bar.
- (5) **Failure to Comply with Subpoena.** Failure to comply with any subpoena issued as provided in this Rule shall subject the party served therewith to any and all procedures and/or penalties provided by law and particularly provided under *Idaho Code* Sec. 3-414, Rule 45(f), *Idaho Rules of Civil Procedure*; and Title 7, Chapter 6, *Idaho Code*, or as is

otherwise provided by law. The District Court of the judicial district in which the attendance or production is required, upon the petition of either party, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in District Court proceedings.

- (6) **Oaths and Affirmations.** Any member of the Board of Commissioners and any member of the Client Assistance Fund Committee in matters pending before it may administer oaths and affirmations.
- (b) **Discovery.**
 - (1) **When Permitted.** Discovery shall be permitted as provided by the *Idaho Rules of Civil Procedure*.
 - (2) **Disputes.** Disputes concerning the scope and other aspects of discovery shall be determined by the Chairman of the Client Assistance Fund Committee before which the matter is pending. All discovery orders by the Chairman are interlocutory and may not be appealed prior to the entry of the final order.
 - (3) With the approval of the Chairman of the Committee, testimony may be taken by deposition or by commission if the witness is not subject to serve of subpoena or is unable to attend to testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.
- (c) **Pre-Hearing Conference.** At the discretion of the Chairman of the Committee, a pre-hearing conference may be ordered to consider matters similar to those set forth in Rule 16(a), *Idaho Rules of Civil Procedure*.
- (d) **Protective Requirements.** All subpoena and discovery procedures shall be subject to the protective requirements of confidentiality.

RULE 616. Costs of Fund Administration. In addition to the payment of such claims as may be authorized by the Board pursuant to these Rules, the Board is authorized to pay from the Client Assistance Fund:

- (a) **Expenses.** The necessary expenses incurred for investigations and hearings conducted pursuant to these Rules; and
- (b) **Costs.** Such costs as are necessary for the administration of the Fund.

SECTION VII Fee Arbitration

RULE 700. Definitions. As used in these Rules, the following^(c) terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

(a) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.

*(b) **Idaho State Bar.** "Idaho State Bar" means those employees or officers of the Idaho State Bar designated by the Executive Director to coordinate the fee arbitration program.

*(Section (b) amended 3-15-91)

(c) **Panel.** "Panel" means the members of a fee arbitration panel in the judicial district where the dispute arose who have jurisdiction to resolve a fee dispute as provided in these Rules.

*(d) **Party.** "Party" means each individual or entity who has executed a consent to a binding fee arbitration.

*(Section (d) amended 2-13-92 - Effective 7-1-92 and amended 3-17-05 - Effective 7-1-05)

(e) **Petitioner.** "Petitioner" means a person or firm which files a request for binding fee arbitration.

*(f) **Rules or These Rules.** "Rules" or "These Rules" means Rules 700 through 708 of the Bar Commission Rules.

*(Section (f) amended 2-13-92 - Effective 7-1-92 and amended 3-17-05 - Effective 7-1-05)

(g) **State.** "State" means the State of Idaho.

*(h) **Mediator.** "Mediator" means a person who attempts to resolve a fee dispute between a client and lawyer when the client has filed a petition for fee arbitration, through non-binding mediation.

*(Section (h) added 3-17-05 - Effective 7-1-05)

RULE 701. Purpose; Effective Date

(a) **Purpose.** The purpose of these Rules is to provide an alternative means for the speedy, efficient, and fair resolution of fee disputes between attorneys maintaining offices in Idaho and their clients.

(b) **Effective Date.** These rules shall become effective on July 1, 1986. Any fee dispute submitted to a panel for determination prior to the effective date of these Rules shall be concluded under the procedure existing prior to the effective date of these Rules.

***RULE 702. Arbitration Panels**

*(a) **Jurisdiction.** Each panel shall have jurisdiction over any disagreement concerning the fee paid, charged or claimed for legal services rendered by an attorney licensed to practice in this state, and where the matter has been submitted to the panel by the Idaho State Bar.

(1) The panel shall not have jurisdiction over:

(A) Disputes over which, in the first instance, a court has jurisdiction to fix the fee;

(B) Disputes over matters which, as a matter of law, are beyond the applicable statute of limitations;

(C) Disciplinary complaints.

*(Section (a) amended 2-13-92 - Effective 7-1-92 and amended 11-15-00 - Effective 12-1-00)

(b) **Establishment and Membership of Panels.** Where required, each panel shall consist of three (3) members, two (2) of whom shall be members of the Idaho State Bar in good standing, and one (1) of whom shall be an adult Idaho citizen of good moral character and reputation who is not a lawyer. (Section (b) amended 3-1-88)

Officers. The Idaho State Bar shall designate one (1) member of the panel as Chairman, who shall preside at the hearing provided in Rule 704.

(d) **Powers and Duties.** Each arbitration panel and each sole arbitrator shall have the following powers and duties:

(1) To exercise all powers relating to the conduct of the hearing, including ruling upon the admissibility or exclusion of evidence and procedural questions.

(2) To encourage the amicable resolution of fee disputes falling within its jurisdiction.

(3) To arbitrate and finally determine fee disputes in the event the parties have not amicably resolved the dispute.

(e) **Compensation and Expenses.** The mediators and members of the arbitration panels shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.

*(Section (e) amended 3-17-05 - Effective 7-1-05)

(f) **Conflict.** It shall be the obligation of any member so designated to serve as arbitrator to disclose to the panel chairman any reasons why he or she cannot ethically or conscientiously serve. In the event that a member declines or is unable to serve, the Idaho State Bar shall appoint another eligible person to the panel.

*(Rule 702 amended 3-15-91)

***RULE 703. Processing Requests for Arbitration**

(a) Proceedings before the panel shall be initiated by a written petition and an arbitration agreement, on a form approved by the Idaho State Bar, signed by the petitioner and filed with the Office of the Idaho State Bar, P. O. Box 895, Boise, ID 83701.

*(b) Upon receipt of the petition and arbitration agreement, signed by the petitioner, the Idaho State Bar shall send a copy of the petitioner's allegations to all other parties to the attorney-client fee agreement, together with a request for their consent to binding arbitration. If a client refuses or fails to consent to arbitration within twenty-one (21) days of his or her receipt of an arbitration request, the matter will be deemed closed due to lack of agreement and both parties shall be notified. In all cases in which a client has filed a fee arbitration petition, even those where an attorney refuses or fails to be bound by arbitration within twenty-one (21) days of his or her receipt of an arbitration request, a mediator shall be appointed by the Idaho State Bar who shall be a member of the Idaho State Bar in good standing to attempt to resolve the fee dispute through non-binding mediation.

*(Section (b) amended 2-13-92 - Effective 7-1-92 and amended 3-17-05 - Effective 7-1-05)

*(c) In cases where the attorney refuses or fails to be bound by arbitration, and mediation is unsuccessful, no further action shall be taken by the Idaho State Bar and the client and attorney shall be left to their respective civil remedies.

*(Rule 703 amended 3-15-91)

*(Section (c) amended 2-13-92 - Effective 7-1-92, amended 6-10-98 - Effective 7-1-98 and amended 3-17-05 - Effective 7-1-05)

***RULE 704. Arbitration**

*(a) The matter shall be assigned to a hearing panel composed of one (1) member if the amount in dispute is \$2,500 or less and to a three-member panel for amounts in dispute over \$2,500.

*(Section (a) amended 2-13-92 - effective 7-1-92; and amended 6-10-98 - effective 7-1-98)

- (b) The chairman of the panel, or the single arbitrator, assigned, as the case may be, shall fix a time and place for the hearing and shall cause written notice thereof to be served personally or by registered or certified mail on the parties to the arbitration, on the other panel members and the Idaho State Bar not less than seven (7) days before the hearing. A party's appearance at a scheduled hearing shall constitute a waiver on his or her part of any deficiency in respect to the giving of notice of the hearing.
 - (c) The single arbitrator or panel assigned shall hold a hearing within thirty (30) days after the receipt of the assignment, and shall render their award within fifteen (15) days after the close of the hearing. The award of the panel shall be made by a majority of the panel where heard by three members, or by the one (1) member of the panel who was designated as sole arbitrator, as provided herein.
 - (d) All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrators.
 - *(e) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration. Any party may also have a hearing before a panel reported by a certified shorthand reporter, at his or her expense, by written request presented to the Idaho State Bar at least three (3) days prior to the date of the hearing. In the event of such request, any other party to the arbitration shall be entitled to acquire, at his or her own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and the panel or sole arbitrator deems it necessary to have a hearing reported, the panel or sole arbitrator may employ a certified shorthand reporter for such purpose if authorized to do so by the Idaho State Bar. The written notice of the hearing sent to the parties shall advise them of these rights.
- *(Section (e) amended 2-13-92 - Effective 7-1-92 and amended 3-17-05 – Effective 7-1-05)*
- (f) Any or all portions of the fee arbitration hearing may be held by teleconference, in the discretion of the panel chairman.
 - (g) The arbitrators may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.
 - (h) The testimony of witnesses shall be given under oath or affirmation. Where so requested, the chairman of the panel shall administer oaths to witnesses testifying at the hearing.
 - *(i) If either party to an arbitration, who has been duly notified, fails to appear at the hearing, the panel may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a decision.
- *(Section (i) amended 2-13-92 - Effective 7-1-92)*
- (j) If all the parties to a controversy so agree, they may waive oral hearings and may submit their dispute in writing by providing the panel or sole arbitrator verified statements of position, together with exhibits, upon which a determination of the controversy may be rendered. However, the arbitrators may nevertheless, if they deem it desirable, require oral testimony of any party or witness, after due notice to all parties.
 - (k) Adjourned dates for the continuation of any hearings which cannot be completed on the first day shall be fixed for such times and places as the arbitrators may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause, or upon its own determination, the panel may postpone the hearing from time to time.
 - *(l) If any member of a three (3) member panel dies or becomes unable to continue to act after the taking of testimony has begun,

and before a decision has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel chairman, consent to proceed with the hearing with the remaining members of the panel.

- *(m) Before closing the hearing, the arbitrators shall specifically inquire of all participating parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be closed and a motion to that effect made by the arbitrators as well as the date for submission of memoranda or briefs, if requested by the arbitrators.
 - *(n) The hearing may be reopened by the arbitrators on their own motion or on application of a party at any time before the decision is signed and filed.
- *(Sections (l), (m) and (n) amended 2-13-92 - effective 7-1-92)*
- (o) In the event of the death or incompetency of a party to the arbitration proceeding, prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon the heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

**(Rule 704 amended 3-15-91)*

***RULE 705. The Decision**

- (a) The decision of the arbitrators shall be expressed in a written opinion signed by all of them; if there is a dissent, it shall be signed separately. Unless the submission or contract provides otherwise, the arbitrators may grant any remedy or relief they deem proper, including a direction for specific performance. A decision may also be entered on consent of all the parties. Once the decision is signed and filed, the hearing may not be reopened except upon consent of all parties.
- (b) While it is not required that the decision be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts (i.e. that the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute; the findings; and the terms of payment, if applicable. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.
- (c) The arbitrators may include in the decision a direction for payment of other expenses related to the proceedings but not for fees to the arbitrators or counsel.
- *(d) The original and two (2) copies of the decision shall be signed by the members of the panel concurring therein. The chairman of the district panel shall forward said decision, together with the entire file, to the Idaho State Bar, which shall thereupon, for and on behalf of said panel, serve a signed copy of the decision on each party to the arbitration, personally or by registered or certified mail, and notify the chairman of the Panel that the matter has been concluded.

**(Rule 705 amended 2-13-92 - effective 7-1-92)*

**(Section (d) amended 3-15-91 and 3-31-00)*

***RULE 706. Effect of the Decision.**

- (a) In any case in which all parties have agreed to be bound by the arbitration, any decision rendered shall be binding upon both parties to the extent provided by *Idaho Code* Sec. 7-901 et seq. and may be enforced by any court of competent jurisdiction.
- *(b) If the decision holds that the participating attorney or attorneys who consented to binding arbitration are not entitled to any

portion of the disputed fee, service of a copy of such award on said attorney or attorneys shall:

- (1) Terminate all claim and interest of the participating attorney or attorneys against the participating client or clients in respect to the subject matter of the arbitration;
- (2) Terminate all right of such attorney or attorneys to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons.

**(Section (b) amended 3-15-91)*

- (c) If the subject matter of an award in favor of an attorney or attorneys who have consented to binding arbitration involves pending litigation and a client or clients, for good reason, shall be unable to promptly pay in the full amount of any award rendered against him or her or them, application may be made to the court having jurisdiction for a determination of means deemed to adequately secure payment. If such a determination shall be made and the terms thereof be promptly fulfilled by the client or clients, such compliance shall entitle the client to the relief specified in subsection (b) of these Rules.

**(Rule 706 amended 2-13-92 - Effective 7-1-92 and amended 3-17-05 – Effective 7-1-05)*

***RULE 707. Confidentiality.** With the exception of the decision itself, all records, documents, files, proceedings and hearings pertaining to arbitrations of any fee dispute under these rules shall not be opened to the public or any person not involved in the dispute except Bar Counsel or the Professional Conduct Board.

**(Rule 707 deleted and 708 renumbered as 707 3-17-03. Rule 707 (then rule 708) amended 2-13-92 - Effective 7-1-92)*

***RULE 708. Additional Rules of Procedure.**

- (a) **Time Requirements.** Except as is otherwise provided in the Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.

- *(b) **Disqualification.** Each party may challenge, without cause, and thereby disqualify, not more than one (1) member of the panel or challenge any member of the panel for cause within fourteen (14) days after notification of the assignment of the panel. Such challenges for cause shall be made upon the same grounds as provided in a civil action and must be made in writing.*

**(Section (b) amended 3-15-91)*

- (c) **Evidence.** The rules of evidence applicable in proceedings before the district courts of this state shall not be required in these proceedings.

(Rule 709 renumbered as 708 3-17-03)

SECTION VIII

Unauthorized Practice of Law

RULE 800. Purpose - Jurisdiction - Effective Date

(a) **Statement of Purpose.** The public interest requires that in securing professional advice and assistance upon matter affecting one's legal rights one should have assurance of the competence and integrity of his or her representative and should enjoy freedom of full disclosure under a recognized privilege of confidentiality. To protect this public interest it is deemed necessary to establish guidelines for the investigation of complaints, and the procedures to be followed to eliminate the unauthorized practice of law as provided by *Idaho Code* Secs. 3-401 and 3-420.

*(b) **Jurisdiction.** Pursuant to the provisions of Article II, Section 1, of the Constitution of the State of Idaho, the Idaho Supreme Court has inherent jurisdiction to prohibit the unauthorized practice of law. Nothing contained herein is intended to limit the inherent authority of the Idaho Supreme Court or the authority of any other Idaho court to regulate the matters coming before it, including attempts to practice law by persons not licensed to practice law before said courts. All Idaho courts have inherent judicial powers to prohibit and to punish the unauthorized practice of law before them, and the Idaho State Bar encourages the use of such direct power to eliminate the unauthorized practice of law whenever necessary or appropriate.

*(Section (b) amended 6-10-98 - effective 7-1-98)

(c) **Authority to Promulgate Rules.** Pursuant to the authority granted in *Idaho Code* Sec. 3-408, and subject to approval of the Idaho Supreme Court, the Board of Commissioners of the Idaho State Bar, as an official arm of the Supreme Court, hereby promulgates the following rules for the conduct of proceedings relating to the unauthorized practice of law.

(d) **Effective Date.** These rules shall become effective on July 1, 1986. Any formal proceeding then pending shall be concluded under the procedure existing prior to the effective date of these Rules.

***RULE 801. Definitions.** As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

(a) **Bar Counsel.** "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.

(b) **Board or Board of Commissioners.** "Board" or Board of Commissioners means the duly elected governing body of the Idaho State Bar.

*(c) **Complaint.** "Complaint" means a written statement which an individual or entity files in the office of Bar Counsel, alleging that a person or entity has engaged in the unauthorized practice of law.

*(Section (c) amended 3-1-88)

(d) **Committee or Standing Committee.** "Committee" or "Standing Committee" means the Standing Committee on Unauthorized Practice of Law appointed by the Board of Commissioners.

(e) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.

(f) **Respondent.** "Respondent" means an individual alleged to have engaged in the unauthorized practice of law.

(g) **Rules or These Rules.** "Rules" or "These Rules" means Rules 800 through 809 of the Bar Commission Rules.

(h) **State.** "State" means the State of Idaho.

(i) **Unauthorized Practice of Law.** "Unauthorized Practice of Law (UPL)" means the practice of law without being duly qualified to do so, as prohibited by statute, court rule, or case law of the state.

*(Rule 801 amended 6-10-98 - effective 7-1-98)

RULE 802. Standing Committee on Unauthorized Practice of Law

*(a) **Membership.** The Board of Commissioners shall appoint a three (3) member committee to be known as the "Standing Committee on Unauthorized Practice of Law of the Idaho State Bar" which shall be composed of members of the Idaho State Bar, in good standing appointed to staggered terms of three (3) years each.

*(Section (a) amended 6-10-98 - effective 7-1-98)

*(b) **Subsequent Terms.** Subsequent terms of all members shall be for three (3) years.

*(c) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as Vice-chairman. The chairman, and in his or her absence the vice-chairman, shall be responsible for calling and presiding over meetings of the Committee and for certifying to the Board all recommendations concerning matters which come before the Committee.

*(d) **Quorum.** Two (2) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.

*(Sections (a)-(d) amended 3-1-88)

*(e) **Duties and Powers.** The Standing Committee shall have the following powers, duties and responsibilities:

- (1) To receive complaints of unauthorized practice of law;
- (2) To refer complaints which appear to have merit to Bar Counsel for investigation and to supervise and direct such investigations by Bar Counsel;
- (3) To review the results of Bar Counsel investigations of allegations of unauthorized practice of law;
- (4) To cause cease and desist letters to be issued seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law;
- (5) To make and submit reports and/or recommendations for the institution of judicial action to enjoin or punish the unauthorized practice of law to the Board of Commissioners.
- (6) To adopt additional rules of procedure subject to approval of the Board of Commissioners.
- (7) To cause subpoenas to be issued upon request of Bar Counsel to compel attendance and production of evidence necessary or convenient to the investigation of a complaint of the unauthorized practice of law.

*(Section (e) amended 3-1-88; 3-15-91; and 6-10-98 - effective 7-1-98)

*(f) **Restrictions on Issuance of Subpoenas.** No subpoena shall be issued under this Rule unless a majority of the Committee shall determine, in writing, that probable cause exists to believe:

- (1) that a respondent is engaged in the unauthorized practice of law; and
- (2) the person to whom the subpoena is directed may have evidence relevant to the investigation of such matter. Each subpoena so issued shall indicate with specificity the documents sought to be produced and the matters on which the person to whom it is directed shall be asked to produce evidence. No such subpoena shall be issued in blank. A copy of each subpoena issued, together with the return thereon, shall be retained in Bar Counsel's investigative file.

*(Section (f) amended 6-10-98 - effective 7-1-98)

*(g) **Service of Subpoenas.** Subpoenas issued under this Rule shall be served pursuant to Rule 45(c)(2), Idaho Rules of Civil Procedure.

***(h) Failure to Comply with Subpoena.** Failure of any person subpoenaed in accordance with this Rule shall subject that person to all penalties and procedures provided by law, including but not limited to those specified in Idaho Code Section 3-414, Rule 45(f), Idaho Rules of Civil Procedure and Title 7 Chapter 6, Idaho Code. The district court of the judicial district in which attendance or production is required, upon the petition of Bar Counsel, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in the district court.

**(Sections (f)-(h) added 3-15-91. Section (f) amended 6-10-98 - effective 7-1-98)*

- (i) **Conflicts.** Members of the Standing Committee shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. If, in any given case, the number of Committee members who may properly render a decision falls below a quorum, the Board of Commissioners may appoint, for that case only, the number of *ad hoc* members necessary to restore the Standing Committee to full membership. Each *ad hoc* member shall fulfill all the responsibilities of the member whom he or she replaces.
- (j) **Compensation and Expenses.** The members of the Standing Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
- (k) **Vacancies.** Vacancies during a term shall be filled by the Board of Commissioners for the remainder of the unexpired term.

***RULE 803. District Committees**

- (a) **Ad Hoc District Committees.** The Board of Commissioners, on its own initiative or at the request of the Standing Committee, may appoint one or more *ad hoc* committees on unauthorized practice in one or more judicial districts, composed of such number of persons who shall serve for the terms, and shall have only the powers and duties, as may be set forth by the Board in the resolution creating and appointing such *ad hoc* committee. No such *ad hoc* committee, however, shall have or exercise any power given to the Standing Committee.
- (b) **Other District Committees.** Nothing contained herein shall be construed to limit the power of a district bar association to establish a district committee having responsibility for monitoring and reporting on unauthorized practice of law within the district's geographical boundaries.

**(Rule 803 amended 6-10-98 - effective 7-1-98)*

***RULE 804. Bar Counsel.** Bar Counsel shall have the following powers and duties with respect to matters involving allegations of unauthorized practice of law:

- (a) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to budgetary considerations and to the approval of the Board of Commissioners.
- (b) To advise the Standing Committee regularly of all complaints submitted to Bar Counsel involving the unauthorized practice of law for their consideration.
- (c) To investigate complaints of unauthorized practice of law under the direction of the Standing Committee, in any way deemed necessary and proper by the Committee, and to report the results of such investigation to the Standing Committee on a regular basis.
- (d) To issue cease and desist letters seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law.

- (e) To act as counsel for the Idaho State Bar in all judicial proceedings initiated by it involving allegations of unauthorized practice of law.
- (f) To maintain permanent records of unauthorized practice of law matters and compile statistics to aid in the administration of the system.
- (g) To perform all other duties and functions as may be required of him or her by the Standing Committee or the Board of Commissioners with regard to the enforcement of unauthorized practice of law statutes, rules or case law.

**(Rule 804 amended 6-10-98 - effective 7-1-98)*

***RULE 805. Investigation and Preliminary Proceedings**

- (a) **Investigation.** All investigations shall be conducted by Bar Counsel under the authority and direction of the Standing Committee.
- (b) **Action by Standing Committee.** The Standing Committee shall review each complaint of unauthorized practice and the report of any investigation by Bar Counsel and may, in its discretion, without Board approval:
 - (1) close the matter without taking further action;
 - (2) cause to be issued a cease and desist letter seeking voluntary compliance with unauthorized practice laws from the respondent;
 - (3) refer the matter to the appropriate county prosecutor for action under *Idaho Code* § 3-420; or
 - (4) recommend to the Board that the Idaho State Bar initiate judicial action against the respondent seeking such remedies as may be provided by law.
- (c) **Board Action.** Upon receipt of the Standing Committee's recommendations, the Board shall review the matter and upon such review, the Board may:
 - (1) Adopt, modify or reject the recommendations of the Standing Committee.
 - (2) Remand the matter to the Standing Committee for further investigation.
 - (3) Seek assurance of voluntary compliance.
 - (4) Approve the initiation of any appropriate judicial action, whether civil or criminal, in any court of competent jurisdiction, to enforce the state's unauthorized practice statutes, rules and case law, including, for example, referring the matter to a county prosecutor for action under *Idaho Code* § 3-420.

**(Rule 805 amended 3-15-91 and 6-10-98 - effective 7-1-98))*

***RULE 806. Voluntary Compliance**

- *(a) Acceptance of Assurance of Voluntary Compliance.** The Board or Standing Committee may accept a written assurance of voluntary compliance that respondent will not continue the unauthorized practice of law, a copy of which shall be maintained in the permanent unauthorized practice files of Bar Counsel.

**(Section (a) amended 3-15-91)*

- *(b) Effect of Giving Assurance of Voluntary Compliance.** The act by a respondent of giving assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Any subsequent act by the respondent in violation of such assurance of voluntary compliance shall *prima facie* establish that the person subject thereto knows, or in the exercise of due care should know, that Idaho law prohibits the unauthorized practice of law by persons not licensed to do so in Idaho, that the Idaho State Bar has determined in the past that the respondent's activities were in violation of such laws, and that further action by the Idaho State Bar to stop such activities was halted based on respondent's assurance

that he or she would no longer engage in the unauthorized practice of law, and that he or she has in the past violated, the law.

**(Section (b) amended 3-31-00)*

**(Rule 806 amended 6-10-98 - effective 7-1-98)*

***RULE 807. Judicial Proceedings.** Civil judicial proceedings shall be initiated and prosecuted by Bar Counsel, after approval by the Board and under its direction, in accordance with the Rules of Civil Procedure applicable to the type of proceeding authorized by the Board. The Board shall have full authority in any such action to conduct such lawsuit, whether to seek enforcement of the state's unauthorized practice laws to their fullest extent or to compromise, settle or dismiss same, as it may in its discretion from time to time determine. Criminal judicial proceedings shall be referred to the appropriate county or state prosecutor, and the Bar's involvement therein shall be directed by the Board. The Board may also delegate its authority to direct the course of any such lawsuit to the Standing Committee or to Bar Counsel, as it may from time to time determine.

**(Rule 807 amended 3-15-91 and 6-10-98 - effective 7-1-98)*

***RULE 808. Immunity.** Members of the Standing Committee, members of any *ad hoc* district committee, Bar Counsel, members of the Board of Commissioners, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.

**(Rule 808 amended 6-10-98 - effective 7-1-98)*

***RULE 809. Confidentiality.** The identity of all complainants, respondents and witnesses in cases involving allegations of the unauthorized practice of law shall be kept confidential until and unless:

- (a) a complaint has been filed in the district court in the judicial district where the alleged unauthorized practice of law occurred; or
- (b) the person has waived the right to confidentiality either by written waiver or by conduct.

**(Rule 809 amended 6-10-98 - effective 7-1-98)*

SECTION IX General Rules

***RULE 900. Election of Commissioners -**

Assuming Office. There shall be an annual election of successors to any commissioner whose term shall expire traditionally on the last day of the annual meeting of the Idaho State Bar. Within the Northern, Western, and Eastern Divisions where each commissioner represents two district bar associations, the district bar associations shall alternate in electing a commissioner within their division, i.e., although all members within a division are eligible to vote, the commissioner elected shall reside or maintain an office in the opposite district of the commissioner whose term is expiring. The following procedure shall be followed for such elections:

- (a) **Notice of Election.** On the first Tuesday in March of any given year, the Executive Director shall give notice of the election and of the time for closing nominations to all members of the Idaho State Bar residing in, or maintaining an office from which they primarily practice law in, the division in which the term of office of commissioner shall expire. The notice shall be given by mail.
- (b) **Nomination.** The nominations for commissioner shall be in writing and shall require the concurrence of a least five (5) members of the Idaho State Bar in good standing and eligible to vote in that division. The nomination must be filed with the Executive Director by the close of the business day on the first Tuesday of the month of April of each year.
- (c) **The Ballots.** The Executive Director shall then prepare an official ballot containing the names of all persons who have been nominated and mail the same fifteen (15) days before the date of the election to each member in good standing of the Idaho State Bar eligible to vote in the division from which the commissioner is to be elected. The ballots shall contain the instruction that the ballot must be received by the Executive Director at the offices of the Idaho State Bar no later than the close of business on the first Tuesday in May of each year. Each member shall sign his or her name on the outside of the envelope in which the ballot is returned.
- (d) **The Election.** The annual election shall be held on the first Tuesday in May of each year. At the close of business on that day all ballots shall be collected for canvassing by a board consisting of not less than three (3) members in good standing of the Idaho State Bar, appointed by the President. The canvassing board shall remove the ballots from the envelopes and determine whether the person whose name is endorsed on the envelope is a member in good standing of the Idaho State Bar and eligible to vote in the district for which the election of a successor has been conducted. Then, the canvassing board shall proceed to examine and count the ballots, with the candidate receiving the greatest number of votes being declared the elected commissioners. The Executive Director shall immediately announce the result of the election.
- (e) **Assuming Office.** The nominee declared elected shall assume office as commissioner of the Idaho State Bar on the last day of the annual meeting of the Idaho State Bar in the year of election.
- *(f) **Vacancy.** If a vacancy occurs on the Board of Commissioners prior to the next scheduled election, the District Bar officers of the district(s) the commissioner represented shall nominate up to two candidates to the Board of Commissioners. The Board of Commissioners shall appoint the commissioner from the nominations submitted by the District Bar officers. The appointed commissioner shall serve out the term in accordance with Rule 900.*

**(Section (f) added 9-13-04)*

**(Rule 900 amended 3-15-90)*

***RULE 901. Officers - Term of Office - Powers and Duties**

(a) Officers

- (1) The officers of the Board of Commissioners of the Idaho State Bar shall consist of a President and President-elect.
- (2) The President and President-elect shall be members of the Board. Each commissioner shall serve as president of the Idaho State Bar during his or her term of office.

(b) Term of Office

- (1) At the first meeting of the Board after the election of any commissioners, officers shall be selected for the ensuing year.
- (2) The term of such officers shall be for six (6) months or one (1) year and until their successors are duly selected.

(c) Powers and Duties

- (1) The President shall preside at meetings of the Board and at the annual meeting of the Idaho State Bar, and shall perform such other duties as may be prescribed by these rules.
- (2) The President-elect shall perform the duties of the President in case of the latter's absence or disability.

**(Rule 901 amended 9-13-04)*

RULE 902. Employees - Compensation

- (a) The Board, from time to time, may employ such additional assistants, including an Executive Director and Bar Counsel, as may be required. Such employees shall perform the duties specifically set out in any of the rules of the Board, by statute or as may be required by the Board.
- (b) The compensation of the Executive Director and employees shall be determined by the Board and a record thereof entered in the minutes.

RULE 903. Committees

- (a) **General Executive Committee.** The Board of Commissioners shall constitute the general executive committee of the Idaho State Bar.

(b) **Examination Committee. Examinations of applicants for admission shall be conducted and papers graded under the direction of the Board of Commissioners. The grading of the bar examination shall be conducted in accordance with the *Bar Examination Grading Standards and Procedures* as approved by the Idaho Supreme Court. However, it is the power and duty of the Board finally to consider and determine what recommendation shall be made respecting admission or rejection of applicants.*

(c) **Professional Conduct Committees. The Board shall appoint, with the approval of the Idaho Supreme Court, a Professional Conduct Board and such hearing committees as provided by the Rules for Review of Professional Conduct, and such committees shall take such action and conduct such proceedings as are required by such rules.*

(d) **Unauthorized Practice of Law Committees. The Board shall appoint a Standing Committee on Unauthorized Practice of Law as provided by the Rules on Unauthorized Practice of Law, and such committees shall take such action and conduct such proceedings as are required by such rules.*

- *(e) Annual Meeting Committees.** The President-elect of the Idaho State Bar shall have the power to appoint such committees on arrangements, programs and other matters connected with the annual meeting of the Idaho State Bar as he or she shall deem advisable.

**(Sections (b), (c), (d) & (e) amended 9-13-04)*

- (f) Character and Fitness Committees.** The Board shall appoint a Committee on Character and Fitness as provided by the Rules on Admissions, and such committees shall take such action and conduct such proceedings as are required by such rules.
- (g) Client Assistance Fund Committee.** The Board shall appoint a Committee to consider matters involving the Client Assistance Fund and such committees shall take such action and conduct such proceedings as are provided by the Rules.

**(Section (g) amended 12-5-02)*

- (h) Other Committees.** The Board may appoint such other committees from time to time as appear necessary, and define the duties of such committees.

***RULE 904. Board Meetings**

- (a) Regular Meetings.** The Board shall hold meetings, the exact time and place of such meetings to be fixed by the Board or President, and provide appropriate notice to each commissioner, the members of the Bar, and the public.
- (b) Special Meetings.** The Board may call such special meetings as it deems necessary and provide appropriate notice to each commissioner, the members of the Bar, and the public.

**(Rule 904 amended 9-13-04)*

***RULE 905. Meetings of the Bar**

- (a) Annual Meeting.** There may be an annual meeting of the Idaho State Bar at such time and place as shall be fixed by the Board. At the annual meeting, the members present shall constitute a quorum, each member shall have one (1) vote and questions shall be determined by a majority of the votes cast at the annual meeting.
- (1) Notice.** Notice by mail of time and place of such meeting shall be given by the Executive Director to each member of the Idaho State Bar at least fifteen (15) days prior thereto.
- (b) First Mid-winter Meeting.** At a time and place selected by the Commissioners in the month of October of each year, there shall be a meeting of the Board of Commissioners and the delegates of each district bar association organized and existing as provided in Rule 908, for the purpose of presenting resolutions concerning the matters designated in Rule 906(a). The meeting shall be open to any member of the Idaho State Bar.
- (c) Second Mid-winter Meeting.** At a time and place determined by the Commissioners in the month of December of each year, there shall be a meeting of the Board of Commissioners and the delegates of each district bar association organized and existing as provided in Rule 908 for the purpose of adopting or rejecting resolutions on matters described by Rule 906(a). The meeting shall be open to all members of the Idaho State Bar.

**(Rule 905 amended 9-13-04)*

***RULE 906. Resolution Process**

- (a) Purpose and Matters to be Considered.** All matters relating to or affecting the statutes or law of the State of Idaho, rules of court, the policy of the Idaho State Bar or the governance of the Idaho State Bar or of the district bar associations shall be determined by the members of the Idaho State Bar by direct secret ballot or through a vote of the district bar associations, as hereinafter provided in this rule, provided, however, that matters relating to technical corrections, clarification, or implementation

of the Idaho Bar Commission Rules may be adopted by the Board of Commissioners and proposed to the Idaho Supreme Court.

- (b) Submission of Resolutions.** Resolutions may be submitted by the Board of Commissioners, district bar associations, sections or committees of the bar, or by any bar member. Resolutions shall be submitted in writing, with copies of any proposed legislation or rules change attached, to the office of the Executive Director of the Idaho State Bar on or before September 25. Each resolution submitted shall be reviewed by the delegates to the first mid-winter meeting so that they may become familiar with the purpose of the resolution and report to the members of their district bar.
- (c) Voting - Eligibility.** Each judge and each Idaho State Bar member on active status or house counsel shall be entitled to one vote on each question presented.
- (d) Voting - Method.** Following the First Mid-Winter Meeting, the Executive Director shall mail a ballot to all eligible voters, listing all resolutions in "aye or nay" form, and including instructions for return of ballots. Voters may return the ballots to the offices of the Idaho State Bar, or may cast them at their respective District Bar meeting. Questions shall be determined by the combined ayes and nays cast statewide by both methods.
- (e) First Mid-Winter Meeting.** The first mid-winter meeting is scheduled in accordance with Rule 905(b).
- (1) Delegates.** Each district bar association shall elect or appoint one (1) member from the district bar to serve as delegate to the meeting. Each Bar Commissioner shall also serve as a delegate.
- (2) Vote.** The vote of each district bar on any question shall be cast at the October meeting as instructed by the district bar. Each question shall be determined by a majority vote of all delegates present at the meeting.
- (3) Determination whether to Circulate.** All resolutions submitted by the district bar associations, Idaho Supreme Court and the Board of Commissioners shall be automatically considered submitted for resolution process consideration, unless two-thirds of the delegates present at the October meeting conclude that a proposed resolution is clearly outside the scope of the Bar's authority as an integrated bar.
- (f) Circulation of Resolutions to Membership.**
- (1)** All resolutions submitted by the district bar associations, Idaho Supreme Court and the Board of Commissioners, and all other resolutions approved by a majority vote cast by the delegates, as provided in this rule, shall be circulated directly to the members of the Idaho State Bar as soon as practical by the Commissioners.
- (g) Consideration by District Bar Associations.** Each resolution following its dissemination shall be considered by the members of each district bar association at a meeting held prior to December 1 of each year.
- (h) Amendments to Circulated Resolutions.** Proposed amendments to circulated resolutions may be offered at any district bar association resolution meeting. Once an amendment is proposed at a district bar association resolution meeting, an advisory vote shall be taken at the meeting where the amendment was offered and shall be taken at any subsequent district bar association resolution meetings if the amendment is approved by the advisory vote at the resolution meeting where the amendment was offered. Proposed amendments shall be germane to the original resolution and shall not be contrary to or defeat the intent of the original resolution.
- (i) Circulation of Proposed Amendments.** Proposed amendments approved by an advisory vote of the members at least one district bar association meeting shall be disseminated to the officers of

the district bar associations prior to the second midwinter meeting.

- (j) **Second Mid-Winter Meeting.** The Second Mid-winter meeting is scheduled in accordance with Rule 905(c).
- (1) **Delegates.** Each district bar association shall elect or appoint one (1) member of the district bar as the delegate to the meeting who shall cast the vote of the district bar on each resolution circulated and voted on by the members of that district bar association.
- (2) **Vote.** The vote of each district bar shall be cast according to the ayes and nays cast by the voting members of that district.
 - (A) **On Amendments to Circulated Resolutions.** Notwithstanding any other provisions of this Rule, each delegate shall have discretionary authority to also vote on any proposed amendments offered at one of the district bar association resolution meetings and approved by an advisory vote to said resolutions.
- (k) **Referendum.** A resolution may provide whether a referendum of the membership shall be taken on any question and the form and substance of the question to be presented, which question shall be so framed as to be capable of answer by "yes" or "no".
 - (1) **Ballots - Canvassing.** The Executive Director shall prepare ballots within ten (10) days following the December meeting of the district bar delegates containing such questions and mail one thereof to each member of the Idaho State Bar, such ballots to be returned personally or by mail to the Executive Director within fifteen (15) days after the date the ballot was mailed to each attorney. Envelopes containing voted ballots shall be endorsed and envelopes and ballots opened, deposited and canvassed as provided by Rule 900(c) except that the Board of Commissioners shall constitute the canvassing committee. Canvassing shall be performed at the Board meeting following the closing of balloting and the Board shall declare the majority vote to be the opinion of the Idaho State Bar on said question and publish the same.
- (l) **Emergency.** If the Commissioners of the Idaho State Bar determine that an emergency exists and that the decision of the Idaho State Bar members is needed on any question, they may call a meeting of or otherwise canvass the delegates of the district bar associations last appointed to attend the December meeting of the district bar delegates or any alternate designated by the district bar president, and upon a majority vote as provided in Rule 906(c) may either adopt a resolution or submit a question for vote to the members of the Bar as provided in Rule 905(a).

**(Rule 906 amended 9-13-04)*

***RULE 907. District Bar Associations**

- (a) As previously established by the Board of Commissioners, the State is divided into seven district bar associations corresponding to the Idaho Judicial Districts as defined by Section 1-801 of the Idaho Code.
 - (1) All active, affiliate, emeritus and house counsel members, and judges of the Idaho State Bar, residing within or maintaining an office from which they primarily practice law within the state of Idaho within the territorial limits of each district association so organized shall be members of such association. All active members, house counsel and judges are entitled to vote at any meeting thereof.
- (b) Each district bar association shall adopt Uniform By-Law Provisions promulgated by the Idaho State Bar and file a copy of such duly adopted provisions with the Executive Director of the Bar. Amendments to the Uniform By-Law Provisions may be adopted by the Board, only with the concurrence of a majority of all of the officers of the district bar associations. Each district bar association may adopt additional rules and regulations, not inconsistent with the rules governing the Idaho State Bar, and file

such additional rules and regulations with the Executive Director of the Bar as herein provided.

- (1) A district bar association may, by vote as provided by its by-laws, delegate to committees power to act upon any matter of concern to said district bar association.

**(Rule 907 amended on 9-13-04)*

RULE 908. Records. The Executive Director shall have general charge of the records and files of the Board and of all property of the Board. He or she shall keep a complete, permanent file of all applications for admission to the Bar and members of the Idaho State Bar. He or she shall keep minutes of the proceedings of the Board. Bar Counsel shall keep complete, permanent files of all matters involving professional conduct proceedings, unauthorized practice of law, and ethics.

***RULE 909. Claims.** The Board of Commissioners of the Idaho State Bar shall conduct the fiscal affairs of the Bar in accordance with generally accepted accounting principles and shall have an annual audit of the financial reports as provided in *Idaho Code* 3-409. The Executive Director shall administer the day-to-day financial affairs of the Bar subject to the general supervision of the Board and shall report on the financial status of the Bar to the Board at each regular meeting of the Board.

**(Rule 909 amended 3-1-88)*

SECTION X

Specialization

RULE 1001. Purpose, Administration and Effective Date

- (a) The purpose of this section is to regulate the certification of lawyers as specialists by certifying agencies, so that public access to appropriate legal services may be enhanced.
- (b) These Rules shall be administered by the Board of Commissioners ("Commissioners") of the Idaho State Bar, with such delegation to its staff as shall be deemed necessary.
- (c) These rules shall be effective January 1, 1994.

RULE 1002. General Powers and Duties

- (a) The Commissioners shall approve agencies which certify lawyers practicing in this state as specialists. The Idaho State Bar itself will not certify lawyers as specialists, though it reserves the power to engage in certification of specialists at some future time.
- (b) In furtherance of the purpose of this section, the Commissioners shall have the following powers and duties:
 - (1) To list those fields of legal practice subject to specialty designation. The Commissioners may make these designations on its own motion or on petition of interested parties and on such criteria as it establishes.
 - (2) To approve appropriate agencies as qualified to certify lawyers as specialists in fields of law designated under subsection (1) above and to adopt standards which certifying agencies must meet.
 - (3) To adopt standards which must be met by certifying agencies in certifying lawyers as specialists.
 - (4) To review and evaluate the programs of certifying agencies to assure compliance with this specialization program.
 - (5) To deny, suspend, or revoke the approval of a certifying entity that has failed to comply with the standards established by this plan and the rules and standards established by the Commissioners.
 - (6) To keep appropriate records of those lawyers certified as specialists by agencies approved under this plan and to report to the Office of Bar Counsel any lawyers who may violate the provisions of this plan.
 - (7) To cooperate with other organizations, boards and agencies engaged in the field of lawyer specialization.
 - (8) To enlist the assistance of advisory committees to assist the Commissioners.
 - (9) To adopt rules, regulations, policies and standards reasonably needed to implement this plan and which are not inconsistent with any of the provisions of this plan.

RULE 1003. Standards for Approval of Certifying Agencies

- (a) The persons in a certifying entity shall include lawyers who, in the judgment of the Commissioners, have extensive practice or involvement in the specialty field.
- (b) A certifying entity's standards for certification of specialists must include, as a minimum, the standards required for certification set out in this plan and in the rules, regulations and standards adopted by the Commissioners from time to time. Such standards shall not discriminate against any lawyer properly qualified for certification as a specialist, but shall provide a reasonable basis for the determination that the lawyer possesses

special competence in a particular field of law, as demonstrated by the following means:

- (1) The applicant must be licensed and currently in good standing to practice law in this state;
- (2) The applicant must demonstrate substantial involvement in the specialty field of practice during the three-year period immediately preceding application to the certifying entity. "Substantial involvement" shall be defined as to each specialty from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that area.
- (3) Peer recommendations from lawyers and/or judges in good standing and who are familiar with the competence of the lawyer, none of whom are related to, or engaged in legal practice with, the lawyer.
- (c) The certifying entity shall be responsible for making appropriate investigations of peer recommendations and for obtaining any other data that may be required to assure the lawyer is in compliance with the legal certification program.
- (d) The certifying entity shall register all lawyers whom it certifies as specialists pursuant to the plan and shall report to the Commissioners those lawyers who are certified.
- (e) Each certifying entity shall annually submit to the Commissioners a report of its activities during the previous year, including a demonstration of the measures employed to ensure compliance with the provisions of these rules.
- (f) The certifying entity shall cooperate at all times with the Commissioners and perform such other duties as may be required by the Commissioners so that the plan is properly administered.

RULE 1004. Minimum Standards for Continued Recognition of Specialists

- (a) For a lawyer to claim to be a certified specialist, the lawyer must be duly licensed on active status and in good standing to practice law in this state throughout the period of which specialty designation is granted and comply with the other requirements of this rule.
- (b) The lawyer must be certified by an entity approved by the Commissioners.
- (c) The lawyer must comply with the CLE requirements set forth in IBCR 402 (a).
- (d) The period of recognition as a specialist shall be for no longer than five years. During this period the Commissioners or appropriate certifying entity may require evidence from the specialist of his or her continued qualification for recognition as a specialist.
- (e) Application for and approval of continued recognition as a specialist shall be required prior to the end of each certification period. To qualify for continued recognition as a specialist, a lawyer applicant must pay the required fee and meet the requirements for certification renewal established by these Rules or such other Rules as may be adopted by the Commissioners.

RULE 1005. Privileges Conferred and Limitations Imposed

- (a) A lawyer certified as a specialist as provided by these Rules may communicate that fact, but must clearly identify the particular certifying entity that recognizes the lawyer as a specialist. The

lawyer shall not represent, either expressly or implied, that his or her specialty status is recognized by any entity other than the certifying entity. Specifically, certification shall not entitle the lawyer to suggest that he or she is certified by the Idaho State Bar.

- (b) Nothing in this plan shall in any way limit the right of a certified specialist to practice in other law fields, even if the lawyer is not recognized as a specialist in those other fields.
- (c) No lawyer shall be required to be recognized as a specialist in order to practice in the field of law covered by that specialty. Any lawyer shall have the right to practice in any field of law, even though he or she is not recognized as a specialist in that field. Participation in this plan shall be on a voluntary basis.
- (d) A lawyer may be recognized as a specialist in more than one field of law.

RULE 1006. Fees. To defray expenses of the Idaho State Bar specialization process, the Commissioners may establish and collect reasonable fees from certifying agencies and from lawyers qualifying as specialists under these Rules.

RULE 1007. Review of Adverse Decision

- (a) Any certifying entity or individual adversely affected by a decision of the Commissioners may contest the decision by filing a written request for reconsideration with the Commissioners no more than 21 days after delivery of the decision. A written request for reconsideration shall be delivered to the Executive Director of the Idaho State Bar.
- (b) The Commissioners shall consider any request for reconsideration at its next regularly-scheduled Bar Commission meeting. The Commissioners may require the attendance of witnesses in the consideration of such an appeal, including the appellant. Thereafter, the Commission shall issue written findings of fact and conclusions of law, which shall:
 - (1) Affirm its previous decision;
 - (2) Reverse its previous decision; or
 - (3) Require further investigation of the matter.
- (c) Any certifying entity or individual adversely affected after a request for reconsideration may request review in the Idaho Supreme Court by filing an objection no later than 21 days after delivery of the adverse decision on the request for reconsideration.
- (d) Said objection shall be reviewable by the Supreme Court only if it is alleged that through the arbitrary and capricious action of the Commissioners, or that by reason of a substantial failure to comply with the provisions of these rules, an entity or individual was denied approval.
- (e) Nothing in these rules shall be read to provide for the authority or power of the Commissioners to require a certifying entity to certify an individual lawyer.

RULE 1008. Suspension or Revocation of Recognition as a Specialist

- (a) The Commissioners may require a lawyer to cease holding themselves out as a specialist if the field of practice is no longer subject to specialty recognition, or if:
 - (1) The certifying entity no longer recognizes the lawyer as a specialist; or
 - (2) The certifying entity is no longer approved as a certifying agency under these rules; or
 - (3) The recognition of the lawyer as a specialist was made contrary to these rules; or

- (4) The lawyer recognized as a specialist made a false representation, omission or misstatement of material fact to the Idaho State Bar or any certifying entity; or
 - (5) The lawyer recognized as a specialist has failed to abide by all rules and regulations promulgated by the Commissioners; or
 - (6) The lawyer recognized as a specialist has failed to pay any fees required by the Idaho State Bar; or
 - (7) The lawyer recognized as a specialist no longer meets the standards established for the recognition of specialists; or
 - (8) The lawyer recognized as a specialist has been suspended or disbarred from practice by the Supreme Court or any other state or federal court or entity.
- (b) The lawyer recognized as a specialist has a duty to inform the Idaho State Bar promptly of any fact or circumstance described in Section (1) through (7), above.

SECTION XI

Practice Sections

RULE 1100. Purpose. The continuing education and professional development of Idaho lawyers are greatly enhanced by the formation and advancement of practice sections in specific areas or aspects of the practice of law. The following Rules are established in order to define the role of practice sections within the Idaho State Bar and to provide for their orderly administration. Mindful of the limitations placed on integrated bars, sections are not intended to advance political or ideological points of view.

RULE 1101. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implication.

*(a) **Bar Member.** "Bar Member" means any judge, or any person currently admitted to practice before the Idaho Supreme Court.

*(Section (a) amended 12-5-02)

(b) **Commission; Commissioners.** "Commission" or "Commissioners" means the Idaho Bar Commission, as established by section 3-402, *Idaho Code*, and as otherwise provided for by these Rules.

(c) **Executive Director.** "Executive Director" means the executive officer of the Idaho State Bar, employed by the Commissioners for that purpose.

RULE 1102. Formation

(a) **Petition.** Those seeking to form a new practice section shall secure the signatures of not less than twenty-five (25) bar members, on a form prescribed by the Commissioners.

(b) **Statement of Purpose; Practice Section Title.** A petition seeking formation of a new practice section shall include a statement of purpose and a proposed title for that practice section. The statement of purpose and title shall reflect the particularized field(s) or aspect(s) of the practice law in which the practice section intends to concentrate. Practice sections will not be authorized if it appears that its purpose is to promote a particular political or ideological point of view.

(c) **Action by Commissioners.** Upon receipt of a petition for formation of a practice section, the Commissioners shall review the petition for conformance with these Rules. Thereafter, the Commissioners shall:

- (1) Approve formation of the practice section under such terms and conditions as it may deem necessary for conformance with these Rules; or
- (2) Return the petition to its originators, noting any changes needed in order to bring the petition in conformance with these Rules; or
- (3) Reject the petition as being not in conformance with these Rules or as otherwise duplicative of an existing practice section.

(d) **Organizational Meeting; Officers; By-Laws.** Upon its approval, a practice section shall conduct an organizational meeting, after appropriate notice in *The Advocate*. At the organizational meeting, the practice section shall elect officers to serve until the time set for annual election of officers. The practice section shall also adopt by-laws, in the form generally prescribed for that purpose by the Commissioners. The by-laws shall become effective upon approval by the Commissioners. Specific Commissioner approval shall be necessary for material modifications to the uniform by-laws.

(e) **Amendments to By-Laws.** All amendments to a practice section's by-laws shall require the prior approval of the Commissioners.

RULE 1103. Membership

(a) **Universal Eligibility.** Membership in any practice section shall be open to any bar member, without limitation, except that the Young Lawyers' Section may permissibly restrict its membership according to age and/or years-in-practice.

(b) **Other Members.** Practice sections may authorize memberships by persons other than bar members, on terms and conditions to be set forth in its by-laws.

*RULE 1104. Meetings

(a) **Annual Meeting.** Each practice section shall hold an annual membership meeting. At the annual membership meeting, each practice section shall deliver an annual report of its activities for the preceding year. Each practice section shall also deliver an annual report at the Idaho State Bar Annual Meeting. The annual report of the practice section shall also be submitted to the Executive Director.

(b) **Election of Officers.** Unless its by-laws specifically provide otherwise, each practice section shall conduct its annual election of officers and directors in conjunction with the annual membership meeting.

(c) **Other Meetings.** A practice section may conduct such other meetings as may be appropriate, consistent with its by-laws and the giving of proper notice.

*(Rule 1104 amended 9-19-96)

RULE 1105. Finance

(a) **Annual Dues.** Practice sections shall primarily be funded by annual section dues, to be collected by the Executive Director in the course of annual State Bar licensing. The amount of such dues shall be established in accordance with the practice section's by-laws.

(b) **Section Funds.** All funds of practice sections shall be funds of the Idaho State Bar, to be administered for practice section purposes.

(c) **Additional Revenues.** Practice sections shall be permitted to generate additional revenues in any manner consistent with these Rules

(d) **Fiscal Year; Budget.** The fiscal year of practice sections shall be January 1 - December 31. Each practice section shall submit a proposed budget on the form prescribed for that purpose to Executive Director not later than December 1.

(e) **Expenditures.** Practice section funds shall be maintained in an account established for that purpose by the Executive Director. All expenses claimed against such funds shall be submitted to the Executive Director, who shall promptly pay all appropriate expenses. Practice sections shall abide by the expense policy approved by the Commissioners concerning travel, meals, mileage and other expenses. Any dispute between the governing board of a practice section and the Executive Director concerning the payment of claimed practice section expenses shall be submitted to the Commissioners, whose decision shall be final.

(f) **Accounting.** An accounting and audit of practice section funds shall be conducted on at least an annual basis, as part of the State Bar annual audit. Any bar member shall be entitled to review the

finances of a practice section, upon reasonable request made to the Executive Director.

- (g) **Administrative Fee.** The Idaho State Bar shall annually assess an administrative fee to each practice section, in a formula to be approved by the Commissioners.

RULE 1106. Legislative/Political Activity

- (a) **Generally.** The Idaho State Bar is an integrated bar, and as such is limited in its ability to engage in legislative and political activity. The appropriate avenue for engaging in that limited legislative/political activity is set forth in Rule 906(a). Any practice section seeking to engage in the promotion of legislation or any other political position must first comply with Rule 906(a).
- (b) **Administration of Justice.** Section 3-418, *Idaho Code*, provides that the Idaho State Bar may from time-to-time provide expertise to the Governor, Legislature and/or Supreme Court on matters affecting the administration of justice. A practice section may properly engage in this type of technical assistance to the Legislature or other agencies of government, but must first advise the Commissioners of its intention to do so.
- (c) **Notice to Commissioners.** A practice section shall first notify the Commissioners, through the Executive Director, of any intended legislative/political activity to be conducted.

Rule 1107. Practice Section Council

- (a) **Purpose.** The Practice Section Council ("Council") shall exist to address the continued development of practice sections within the Idaho State Bar, and to recommend policy considerations to the Commissioners.
- (b) **Membership.** Each practice section shall be permitted to designate a representative to attend and vote at any meeting of the Council. The Commissioners shall designate one or more of its members to attend Council meetings as a nonvoting member.
- (c) **Officers; Committees.** The Council may elect such officers and form such committees as it deems necessary.
- (d) **Meetings.** The Council shall meet annually at the State Bar Annual Meeting, and at such other times as deemed appropriate, for the purpose of considering issues common to practice sections. The Council shall consider whether to propose resolutions for inclusion on the annual State Bar resolution process. The Council may designate representatives from time-to-time to attend Bar Commission meetings.

Rule 1108. Continuing Legal Education

- (a) **Continuing Legal Education.** Practice sections are encouraged to engage in the planning and presentation of continuing legal education programs, subject to the considerations set forth in subsection (b) below.
- (b) Practice sections shall abide by and be subject to agreements entered into between the Commissioners (on behalf of the Idaho State Bar) and other organizations, including but not limited to the Idaho Law Foundation, Inc., concerning the planning, implementation and financial considerations of continuing legal education programs.

Rule 1109. Abolition of Practice Section

- (a) **Annual Review; Abolition.** The activity of each practice section shall be reviewed by the Commissioners annually within sixty (60) days of the Annual Meeting, and, in the event the Commissioners determine that a practice section is no longer active or for any other reason is no longer deemed necessary or useful to the Bar, then such practice section may be abolished by the Commissioners.

- (b) **Minimum Membership.** Two years after the formation of a practice section, it is expected that minimum membership should be maintained of at least fifty (50). Membership of less than fifty (50) members will create a presumption that the practice section is inactive, although the presumption may be overcome upon a showing by the practice section's officers. A possible solution to a low practice section membership level may be merger into another existing practice section.
- (c) **Practice Section Funds.** In the event that a practice section is abolished, any remaining funds of that practice section shall revert to the general fund of the Idaho State Bar.

Rule 1110. Miscellaneous

- (a) **Surveys.** No survey or similar research of bar members shall be conducted by a practice section without prior coordination with the Executive Director. This coordination is intended to prevent multiplicity and overlap of such surveys.
- (b) **Copyrights.** The Idaho State Bar shall own the copyright to all materials produced by its practice sections.
- (c) **Removal of Officers.** The Commissioners may, for good cause shown, remove and replace any or all officers of a practice section. Such action shall be taken only if, in the Commission's judgment, the continued participation of the officer(s) in question threaten to place the Idaho State Bar or the practice section in violation of these Rules, or of state or federal law, or if continued participation of the officer(s) poses a threat of irreparable harm to the Idaho State Bar or the practice section.
- (d) **Open Meetings.** Meetings of practice sections shall be governed by Idaho's open public meetings law, section 67-2341, *Idaho Code*, et. seq.

(Section XI added 4-13-94, effective 7-1-94)

SECTION XII

Lawyer Assistance Program

RULE 1200. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) Board or Board of Commissioners. "Board" or Board of Commissioners means the duly elected governing body of the Idaho State Bar.
- (b) Committee or LAP Committee. "Committee" or "LAP Committee" means the Lawyer Assistance Program Committee, as appointed by the Board of Commissioners to oversee the Lawyer Assistance Program.
- (c) Executive Director. "Executive Director" means the chief administrative officer of the Idaho State Bar.
- (d) Lawyer Assistance Program or LAP Program. "Lawyer Assistance Program" or "LAP Program" means the program established to pursue the objectives set forth in Rule 1201 of these Rules.
- (e) Rules or These Rules. "Rules" or "These Rules" means Rules 1200 through 1206 of the Idaho Bar Commission Rules.

RULE 1201. Purpose.

- (a) **Purpose.** Impairment of a lawyer's performance may result from physical, mental or emotional illness, including addiction. The purposes of the LAP Program are as follows:
 - (1) protect the interests of clients from harm caused by impaired lawyers;
 - (2) educate the bench, bar and community to the causes of and remedies for lawyer impairment;
 - (3) develop and administer resources to assist lawyers and judges in securing treatment for addictive diseases and mental health issues, including but not limited to alcoholism and chemical dependency, by providing a system which encourages early entry of the impaired attorney, while recognizing the necessity for absolute confidentiality and trust;
 - (4) provide assistance to impaired lawyers in a manner that is separate and distinct from attorney discipline proceedings and to maintain that distinction.

RULE 1202. Lawyer Assistance Program Committee

- (a) Members. The Board of Commissioners shall appoint a Lawyer Assistance Program Committee to oversee the LAP. The Commissioners shall appoint a Chair annually with input from the LAP Committee.
- (b) Composition. The Committee shall consist of no more than twenty-five members, with consideration given to geographic representation. The members shall have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair lawyers. Non-lawyers are eligible to be appointed as members of the LAP Committee.
- (c) Terms. Committee members shall be appointed for a three-year term. Appointments shall be on a staggered basis, so that the number of terms expiring shall be approximately the same each year.
- (d) Duties. The Committee shall have the following duties:
 - (1) Exercise general oversight responsibility to ensure that the program achieves its purposes and goals.

- (2) As needed, recommend LAP rules, procedures and policies to the Board of Commissioners for its approval and/or submission to the Idaho Supreme Court.
- (3) Carry out the duties listed under Rule 1203, in the absence of a Coordinator of the program.
- (e) Meetings. The Committee generally shall meet on a quarterly basis or upon call of the chair with adequate notice to all members. The actions of the Committee are governed by these rules and procedures, the Idaho Bar Commission Rules and the Idaho Rules of Professional Conduct.
- (f) Quorum. There shall be no quorum requirement for the transaction of LAP Committee business, provided that proper notice of the meeting is given.

RULE 1203. Program Coordinator.

- (a) Appointment of Program Coordinator. With the approval of the Board of Commissioners, the Executive Director may hire a Program Coordinator, with input from the LAP Committee.
- (b) Qualifications. The Program Coordinator should be either a person with experience in recovery or a qualified mental health professional with addiction treatment experience. The Program Coordinator shall have sufficient experience and training to enable him/her to identify and assist impaired lawyers.
- (c) Responsibilities. The Program Coordinator's job responsibilities shall as determined by the Executive Director, in consultation with the LAP Committee and the Board of Commissioners.

Rule 1204. Eligibility; Scope of Program.

Subject to available resources, the LAP Program is available to provide assistance to lawyers and judges for the following problems:

- (a) Addictive diseases and mental health issues, including but not limited to alcoholism and chemical dependency.
- (b) Co-dependency and interpersonal relationship problems arising from addiction related or other dysfunctions.

Rule 1205. Confidentiality and Immunity; Records.

- (a) **Confidentiality/Records.** All records of the LAP Program shall be confidential. The LAP shall not maintain permanent records relating to the names of the participants or the nature of their participation. Each person who is the subject of any form of inquiry under these Rules shall be assigned a number, which shall thereafter be used in any subsequent action taken by the LAP Committee, the LAP Program or the Program Coordinator.
- (b) **Immunity.**
 - (1) **Absolute.** Such appointee or appointees shall be immune from civil liability for acts and omissions in the performance of duties under this Rule, except for demonstrated fraudulent or malicious conduct, so long as he or she or they are acting:
 - (A) Pursuant to any order made under or pursuant to these Rules; or
 - (B) Pursuant to any like or similar order directing or providing for legal assistance to clients or of persons adversely affected by the lawyer; or
 - (C) Pursuant to this particular Rule or any similar request or direction by the Idaho State Bar of an appointed or acting lawyer to so act in the public interest or for the protection of any member of the public.

- (2) **No Immunity.** The provisions of this Rule shall not, however, provide immunity to any lawyer, whether or not appointed and whether or not originally concerned with the matter by reason of any appointment, order or relationship of the kinds enumerated above, if it be legal work which he or she has agreed to do for a fee which has been privately negotiated with, and agreed to by, the client.
- (3) **Qualified Immunity.** Notwithstanding the provisions of subsection (2) of this Rule, to the extent that a lawyer provides services under this Rule, which work or services reasonably and equitably justifies the charging or reserving of a fee for legal services, qualified immunity shall apply even though such fee be fixed and charged if the same is pursuant to the appointing or authorizing authority or the Supreme Court and is not pursuant to a negotiated private fee arrangement with such client.
 - (A) **Fees Allowed by Court.** This Rule shall not be construed to limit or preclude the Supreme Court or appointing authority from allowing reasonable fees in proper cases for work done pursuant to any directive, order or authorization in keeping with these Rules, which fees may be accepted without waiver of or prejudice to the qualified immunity herein above provided so long as the fees are not privately negotiated.
- (c) **Referrals.** Any attorney member of the Idaho State Bar may contact the LAP seeking assistance or may be referred by any other source.
- (d) **Location of Facility.** The LAP office should be located outside the Idaho State Bar office and maintain an “800” confidential hotline number. Only the LAP staff should have access to receiving calls on the “800” hotline number.

Rule 1206. Miscellaneous.

- (a) **Finance.** All funds of the Lawyer Assistance Program shall be funds of the Idaho State Bar. The LAP program funding shall be determined each year dependent on available resources.
- (b) **Compensation and Expenses.** The members of the LAP Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules. All expenses claimed shall be submitted to the Executive Director, who shall promptly pay all appropriate expenses. Committee members shall abide by the expense policy approved by the Commissioners concerning travel, meals, mileage and other expenses.

(IBCR Section XII added 5-28-02 – effective 7-1-02)